ANNUAL REPORT 1988 - 89

CANADA

RCMP

PUBLIC COMPLAINTS COMMISSION

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ANNUAL REPORT 1988-89

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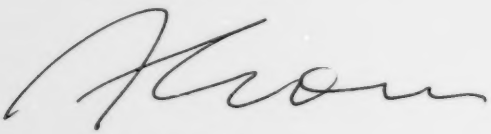
The Honourable Pierre Blais, P.C., M.P.
Solicitor General of Canada
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Blais:

Pursuant to section 45.34 of the *Royal Canadian Mounted Police Act*, I hereby submit the Annual Report of the Royal Canadian Mounted Police Public Complaints Commission for the fiscal year 1988-89, for tabling in each House of Parliament.

Yours sincerely,



Richard Gosse
Chairman

June 20, 1989

"Any member of the public

having a complaint concerning the conduct,

in the performance of any duty or function under this Act, of any member [of the RCMP] or other person appointed or employed under the authority of this Act

may,

whether or not that member of the public is affected by the subject-matter of the complaint,

make the complaint to

(a) the Commission;

(b) any member [of the RCMP] or other person appointed or employed under the authority of this Act; or

(c) the provincial authority in the province in which the subject-matter of the complaint arose that is responsible for the receipt and investigation of complaints by the public against the police."

Subsection 45.35 (1) of the *Royal Canadian Mounted Police Act*, which came into force on September 30, 1988.

COMMISSION MEMBERS

Full-time

RICHARD GOSSE, Q.C.
Chairman

Dr. Gosse was Deputy Attorney General of Saskatchewan from 1977 to 1985, and Inspector General of the Canadian Security Intelligence Service from 1985 until his appointment as Commission Chairman in 1988. Formerly a Professor of Law at Queen's University and the University of British Columbia, he served at one time as Counsel to the Ontario Law Reform Commission and was the first full-time member of the British Columbia Law Reform Commission. He practised law in British Columbia for several years and is a member of the Bar of that province as well as the Bars of Ontario and Saskatchewan.

FERNAND SIMARD
Vice-Chairman

Mr. Simard has been a member of the Quebec Bar since 1961. He specialized in litigation and administrative law, and practised in Montreal for many years. He has been a chairman of the disciplinary court for federal maximum and medium security penitentiaries.

Part-time

British Columbia

L. ALLAN WILLIAMS, Q.C.

Mr. Williams is a former Attorney General of British Columbia, and also served as Minister of Labour for that province. He is, at present, senior counsel with the Vancouver law firm of Davis and Company.

Alternate **LYMAN R. ROBINSON, Q.C.**

Professor Robinson is a member of the Faculty of Law at the University of Victoria and a former Dean of that Faculty. He is a member of the Law Reform Commission

of British Columbia, the tribunal panel of the Canadian Human Rights Commission, and the Saanich Police Board.

Alberta

MR. JUSTICE SIDNEY V. LEGG

Mr. Justice Legg is a supernumerary judge of the Court of Queen's Bench of Alberta, and has been a member of the Alberta judiciary since 1960. He has been Chairman of the Alberta Law Enforcement Review Board since its inception in 1974. He is a past President of the Canadian Cystic Fibrosis Foundation.

Saskatchewan

DONALD K. MacPHERSON, Q.C.

Mr. MacPherson is the senior partner in the Regina law firm of MacPherson, Leslie and Tyerman, and the part-time Chairman of the Saskatchewan Police Commission. He is a past President of the Law Society of Saskatchewan, and the Canadian Asso-ciation for the Mentally Retarded.

Alternate **DAVE ZACHARIAS**

Mr. Zacharias is a farmer and Swift Current businessman. He has been active in, and served as president of, a number of Swift Current community organizations.

Manitoba

GRAEME THOMSON HAIG, M.C., C.D., Q.C.

Mr. Haig is the senior partner of the Winnipeg law firm of D'Arcy and Deacon. A past President of the Manitoba Bar Association, he has headed many Manitoba community organizations. Mr. Haig was appointed a Special Com-'missioner to inquire into lotteries and gambling in Manitoba.

Alternate **S. JANE EVANS**

Ms. Evans is a partner in the Winnipeg law firm of Aikins, MacAulay and Thorvaldson. She has been active in many community-service organizations and is currently President of Family Services of Winnipeg Inc.

New Brunswick

JUDITH MacPHERSON

Ms. MacPherson is a Moncton lawyer in private practice. She is currently President of the New Brunswick Bar Association. She has been an adjudicator of the Public Service Labour Relations Board since 1980.

Alternate **MARIE ODETTE SNOW**

Professor Snow is a member of the Faculty of Law at the University of Moncton, and a member of the New Brunswick Bar.

Nova Scotia

BLAIR HARRIS MITCHELL

Mr. Mitchell is an associate with the Halifax law firm of Green, Veniot and Parish. He is a director of the Nova Scotia Civil Liberties Association, and a Governor of the University College of Cape Breton.

Alternate **EARL HOLT SMITH**

Mr. Smith, who resides in River John, recently retired after 20 years as an adult probation officer with the Nova Scotia Attorney General's Department. He is a former municipal police officer.

Prince Edward Island

GRAHAM W. STEWART

Mr. Stewart is a partner in the Charlottetown law firm of Campbell, Stewart. He is a former Deputy Attorney General of Prince Edward Island, and is active in many community organizations.

Alternate **W. ALLISON MacRAE**

Mr. MacRae is a Charlottetown businessman, who has been active in the community for many years. He is a past President of the Prince Edward Island Racing and Sports Commission.

Newfoundland

ROBERT BARRY LEARMONTH

Mr. Learmonth is a partner in the St. John's law firm of Learmonth, Dunn, and a bencher of the Newfoundland Law Society. He is a former Crown Attorney, and is Chairman of the Newfoundland Labour Standards Tribunal.

Alternate **MARIA G. HENHEFFER**

Ms. Henheffer is a member of the St. John's law firm of Martin, Whalen, and specializes in litigation.

Yukon Territories

ROSEMARY B. TREHEARNE

Ms. Trehearne has been the Director of the Native Courtworker Program, Council of Yukon Indians, since 1985. She is President of the Yukon Indian Women's Association, a member of the Yukon Judicial Council, and an adjudicator of the Yukon Human Rights Commission.

Alternate **JOHN WRIGHT**

Mr. Wright is the part-time Chairman of the Yukon Workers Compensation Board. A former major in the Canadian Armed Forces, specializing in military policing, he has been involved in a number of community criminal justice programs.

Northwest Territories

JOHN U. BAYLY, Q.C.

Mr. Bayly has practised law in Yellowknife since 1974. He has a special interest in native rights law, and has represented a number of aboriginal organizations. Mr. Bayly was the first Executive Director of the Northwest Territories Legal Services Board. He was Chairman of the territorial government's Task Force on Spousal Assault in 1984-85.

Alternate **LAZARUS ARREAK**

Mr. Arreak has worked as an adult educator and legal aid representative in various centres on Baffin Island. He is completing a three-year program in Administrative Studies, Public Sector Management, at Arctic College in Iqaluit.

Members-at-large

GISELE CÔTÉ-HARPER, Q.C.

Professor Côté-Harper is a member of the Faculty of Law at Laval University and a member of the Quebec Bar. She is well known for her research and publications on human rights and criminal law. She is a Vice-President of the Canadian Civil Liberties Association.

GINA SACCOCCIO BRANNAN

Ms. Brannan is a lawyer in private practice with the Toronto firm of Lyons, Goodman, and has served as a senior policy adviser in the Ontario Government.

* * *

The *RCMP Act* stipulates that the Commission shall consist of

- a Chairman and a Vice-Chairman;
- a member for each province that has a contract for provincial policing by the RCMP (all provinces but Ontario and Quebec);
- up to three other members (members-at-large).

By virtue of the *Interpretation Act*, "province" for this purpose includes the Yukon and Northwest Territories. Both have contracts for territorial policing by the RCMP, and must therefore have members on the Commission.

Provision is made for the appointment of alternate members for any member of the Commission other than the Chairman. The alternate may act, in the conduct of hearings, in the place of a Commission member in the event of his or her "absence", "incapacity" or "ineligibility".

The Chairman is required to be a full-time member, and the other members may be full-time or part-time. The only other full-time member is the Vice-Chairman.

Commission members are appointed by order of the Governor in Council for terms not exceeding five years. All those appointed to date have been given five-year terms. Members of the RCMP are not eligible to serve on the Commission.

The provincial or territorial minister responsible for policing in each contracting jurisdiction must be consulted prior to the appointment of the Commission member for that jurisdiction.

Where a Commission hearing is held into a complaint about conduct occurring in the course of the RCMP's provision of contractual services, the Commission member from that province or territory is required to be assigned, either alone or with other Commission members, to conduct the hearing.

The Chairman assigns the Commission members to conduct Commission hearings. A single member, or a panel of several members, is deemed to be the Commission for the purpose of the hearing.

Head Office

Office Address

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Mailing Address

RCMP Public Complaints Commission
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K1P 6L4

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Regional Office

British Columbia and the Yukon

Office and Mailing Address

RCMP Public Complaints Commission
Regional Office
840 Howe Street, Suite 970
Vancouver, British Columbia
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Telephone: (604) 666-7363

FAX: (604) 666-7362

AN OPENING WORD

The Royal Canadian Mounted Police, Canada's largest and best known police force, is now governed by a statutory public complaints process. External review and inquiry by an impartial and independent body, the Public Complaints Commission, is an essential element in that process.

The RCMP will continue to investigate complaints against its members. But Parliament has created the Commission to overcome real or perceived difficulties arising from the RCMP itself investigating allegations of improper conduct by its own members. Independent and impartial external review and inquiry will ensure that such complaints are dealt with fairly and without bias.

The Chairman of the RCMP Public Complaints Commission was appointed on February 1, 1988, and the Commission became operational on September 30 of the same year.

This, the first report of the first Chairman of the Commission, covers the fiscal year ending March 31, 1989. Events occurring after that date are occasionally mentioned when they relate to matters under way before the fiscal year ended.

Part I explains the mandate of the Commission and the steps taken to organize it.

Part II deals with complaints. Chapter 3 contains a forecast of the Commission's workload; Chapter 4 provides analysis and commentary on the complaints that have thus far come to the Commission's attention; and Chapter 5 addresses some special concerns about the complaints process.

Part III contains chapters on three outstanding issues: restrospectivity of the legislation; the extent

to which the complaints process can be public; and the link between public complaints and discipline.

Part IV takes a detailed look at the complaints process. It is hoped that this section will be of value to readers interested in knowing more about the new process and how it works.

Section 45.34 of the *RCMP Act* requires that the Chairman, within three months of the end of each fiscal year, submit to the Solicitor General of Canada a report of the Commission's activities during that year. The Minister is required to cause a copy of the report to be laid before each House of Parliament on any of the first 15 sitting days following receipt from the Chairman.

The Chairman takes full responsibility for the contents of this report. He wishes to acknowledge the immense help and support of Commission staff, without which the report could not have been written.

An Opening Word

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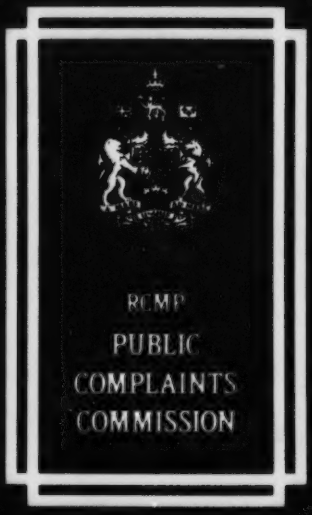


MANDATE AND ORGANIZATION

PART I

CHAPTER 1 THE COMMISSION'S MANDATE

Legislative Background

In the 12 years preceding adoption of the public complaints process by Parliament in 1986, a number of significant events shaped and influenced the development of the federal legislation.

In 1974, a Commission was established by the federal government to inquire into the RCMP's procedures relating to discipline and grievances, and complaints from the public. This Commission, generally referred to as the Marin Commission, reported in 1976. It recommended that discipline and public complaints should be governed by separate processes, an essential and common element of which would be external review by an independent body – a Federal Police Ombudsman. The Ombudsman would report directly to Parliament. The Marin Commission believed that, in general, the police should retain responsibility for investigating complaints from the public, but that the Federal Police Ombudsman should have authority to conduct inquiries and appoint tribunals to hold public hearings on the merits of complaints.

In 1977, a Royal Commission, known as the McDonald Commission, was set up to inquire into certain activities of the RCMP, with particular emphasis on the Security Service. This Commission, which completed its reports in 1981, called for the establishment of an Office of the Inspector of Police Practices. The Inspector was to be part of the Solicitor General's department and would report directly and regularly to the Solicitor General on the results of investigations, and annually on the activities of the Office. The Solicitor General would table the annual report in Parliament. While the McDonald Commission believed the police should have general responsibility for investigating public complaints, the

Inspector was to be empowered to investigate in certain circumstances.

All provinces, except Ontario and Quebec, have entered into arrangements to have the RCMP provide provincial policing services. A number of these provinces, during the 1970s and 1980s, enacted legislation to enable provincial police commissions or similar bodies to deal with complaints by the public concerning the conduct of RCMP members carrying out provincial and municipal policing responsibilities. In 1981, however, the Supreme Court of Canada, in *Attorney General of Alberta v. Putnam*, ruled that provincial legislation empowering a provincial board to inquire into the conduct of RCMP members and, where appropriate, to impose discipline, is unconstitutional.

Notwithstanding the Supreme Court decision and the adoption by Parliament of a public complaints process in 1986, some provinces still have legislation on their statute books dealing with complaints against the RCMP. Indeed, one province enacted such legislation in 1988, establishing procedures which are clearly inconsistent with Part VII of the *RCMP Act*. It is confusing to the public, not in the best interests of the administration of justice, and places the RCMP in an awkward position, to have inconsistent public complaints provisions in federal and provincial statutes. The Commission has drawn this problem to the attention of the federal Deputy Solicitor General, the federal Deputy Minister of Justice and appropriate provincial officials.

In the years following the Marin Report in 1976, federal legislative proposals and the constitutional question of jurisdiction were discussed at meetings of federal and provincial justice ministers and officials. Provincial input, particularly from the contracting provinces, led to changes being made in the proposals.

Between 1978 and 1985, the government introduced a series of legislative proposals in the House of Commons: Bills C-50 and C-19 in 1978, Bill C-69 in 1981, Bill C-13 in 1984, and, finally, Bill C-65 introduced in 1985 and enacted in 1986. Bill C-65 amended the *RCMP Act* through the addition of Parts VI and VII, which established the Public Complaints Commission and the public complaints process.

The Commission has conducted a thorough review of the above-mentioned reports, legislation and jurisprudence to gain a full understanding of the legislative background of Parts VI and VII. In the near future, it plans to publish a background paper containing the results of its review.

Parliament Speaks

Parliament established this new process for making the RCMP and its members accountable to the public for police conduct by amending the *RCMP Act* on March 26, 1986.

The keystone of the process is the Public Complaints Commission.

The underlying rationale for the existence of the Commission is to ensure:

- that individual members of the public will have their complaints fairly and impartially dealt with; and
- that, in examining complaints, the public interest in the fair and proper enforcement of the law is taken into account.

While the legislation was adopted to protect the public against improper police conduct and to provide a remedy in such cases, it also contains provisions to ensure fair treatment for Force members against whom allegations are made.

The Commission's mandate is set out in Part VII of the *RCMP Act*, which was proclaimed in force on September 30, 1988. Parliament assigned certain responsibilities to the Commission as an organization and as a tribunal, and certain others to the Chairman. The Chairman is designated as the Commission's chief executive officer and has "supervision over and direction of [its] work and staff ..."

Part VII provides for:

- reception by the Commission of complaints from the public;
- initiation of complaints by the Chairman where the Chairman considers there are reasonable grounds for taking such action;
- notification by the Commission to the RCMP, for investigation and disposition by the RCMP, of complaints received by the Commission;
- investigation by the Chairman or hearing by the Commission, whether or not the RCMP has investigated the complaint, where the Chairman considered it advisable in the public interest;
- review by the Chairman where the complainant is not satisfied with the RCMP's disposition of the complaint;
- hearings by the Commission when the Chairman has concluded, after a review, that he is not satisfied with the RCMP's disposition and that a hearing should be instituted;
- the making of findings and recommendations by the Chairman and the Commission in their respective reports.

At the same time as Parliament introduced the new complaints process, it also amended the *RCMP Act* in two other major respects:

- by providing, in Part II, for the establishment of the External Review Committee to review and

hear appeals and grievances by Force members (in other words, internal complaints) in the context of discipline, discharge and demotion, and grievance proceedings; and

- by providing, in Parts III, IV and V, for a grievance process for Force members, and for discharge and demotion proceedings, and by making substantial revisions to the disciplinary process.

The External Review Committee and the Public Complaints Commission are two distinct, independent bodies, both external to the RCMP. The External Review Committee deals with matters internal to the Force. The Commission deals with external complaints from the public.

While the Act establishes separate and distinct processes for disciplining members and dealing with public complaints, these matters are linked (see Chapter 6).

A Word About the RCMP

The RCMP has a special place in Canadian society. It is a national symbol. With almost 18,000 members – three times as many as the next largest police force in Canada – its presence is known and felt from the outports of Newfoundland to the west coast of Vancouver Island, from Inuit communities in the Far North to bustling cities in the south.

But the nature and extent of the Force's presence, and therefore its contacts and relationship with the public, vary in different parts of the country.

The RCMP is Canada's federal police force. But it also acts as the provincial police in all provinces but Ontario and Quebec. It polices the Yukon and Northwest Territories. In its provincial and territorial role, the RCMP polices hundreds of small communities. In addition, nearly 200 municipalities, several with large populations, are policed by the RCMP under

special agreements. Fifty per cent of RCMP members are engaged in provincial and municipal policing.

Table 1 shows the distribution of Force members by region and province in 1988.

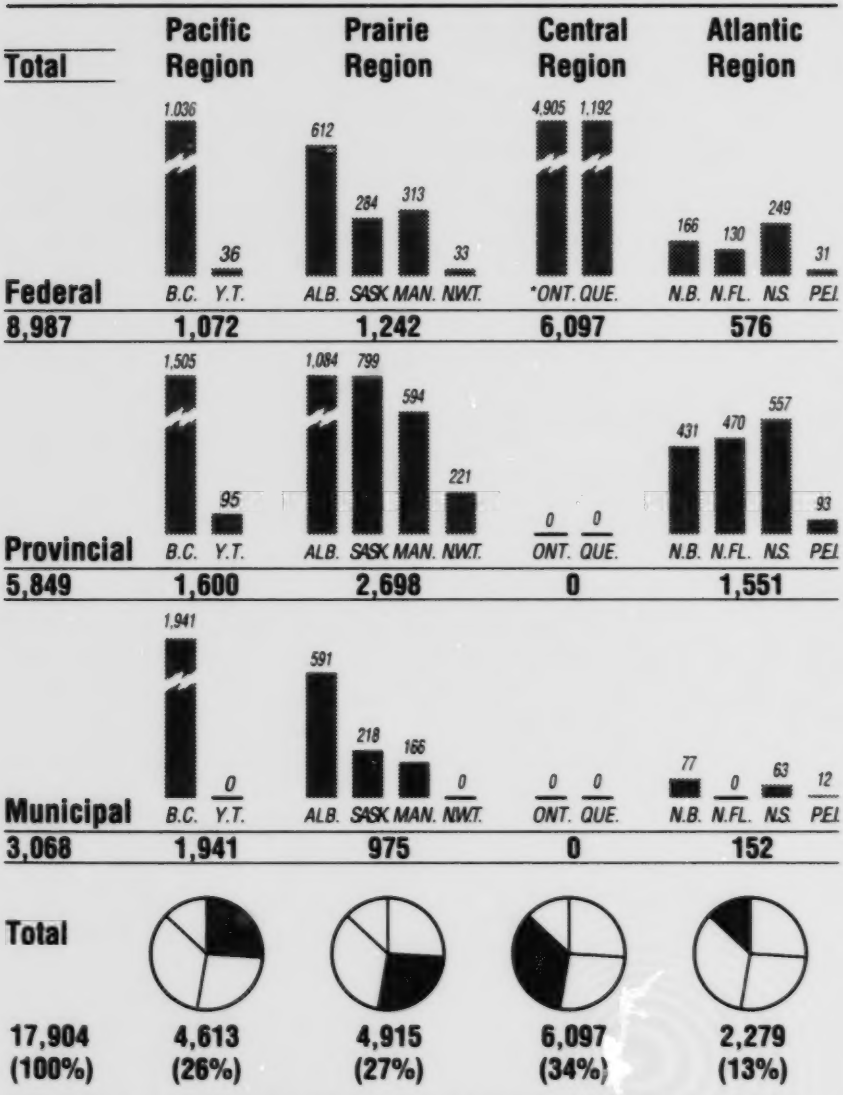
The extent to which the public will make complaints about the Force depends largely on the nature and volume of police work. Traffic enforcement brings police officers into greater contact with the public than, for example, investigations of sophisticated white-collar crime. The substantial number of members at RCMP Headquarters in Ottawa engaged in administration and the provision of national policing services do not have contact with the public in the same way as members conducting investigations and carrying out community policing.

The Mandate in Context

The Commission's mandate is confined to the conduct of members of the RCMP.

To put that mandate in perspective, one needs to examine police action in Canada generally, and the extent to which it is subject to external review and inquiry. For instance, some provinces have adopted legislation to establish public complaints processes for provincial and municipal police forces. Additional issues are raised by the fact that federal agencies other than the RCMP exercise police powers and are not subject to a statutory public complaints process. As well, policing has in some cases been "privatized", as evidenced by the widespread presence of armed security guards and the general growth of "security" services in the private and public sectors.

TABLE 1
Distribution of RCMP Members, by Region, 1988



* *The number of members for Ontario includes those at RCMP Headquarters in Ottawa. The two regional divisions operating in Ontario have a total strength of 2,139, 12% of the Force as a whole.*

In national security matters, the Canadian Security Intelligence Service exercises police-like powers such as electronic surveillance when conducting investigations. The *CSIS Act* provides for a complaints process with external review by the Security Intelligence Review Committee.

Nor should the experience of other countries be ignored. For example, the Ombudsman for the Commonwealth of Australia has been given jurisdiction over public complaints against the Australian Federal Police (a force about one-fifth the size of the RCMP). Complaints against the New South Wales Police (which has over 12,000 members) are dealt with by the State Ombudsman.

The Public Complaints Commission started operations in a year when the spotlight focused time and time again on external review of police conduct:

- legislation with new approaches to external review and inquiry was enacted in Quebec and British Columbia;
- the Royal Commission on the Donald Marshall prosecution was moving to a conclusion in Nova Scotia;
- the Public Inquiry into the Administration of Justice and Aboriginal People was well under way in Manitoba;
- a Commission of Inquiry into Policing in Relation to the Blood Tribe was established by the Alberta Government;
- the shooting of three blacks by police officers in Montreal and in the Toronto area – Anthony Griffin, Lester Donaldson and Michael Wade Lawson – resulted in much public attention and controversy. Charges were laid, inquests held and reviews conducted. The Ontario Solicitor General set up a Task Force on Race Relations and

Policing, chaired by Clare Lewis, Public Complaints Commissioner for Metropolitan Toronto;

- in British Columbia, a Royal Commission of Inquiry into the alleged injuries sustained by Michael Albert Jacobsen in the Vancouver City Police Jail completed its report. The Commission concluded that Jacobsen had been assaulted by police in the city jail, resulting in a broken knee-cap, and that the police involved had lied under oath and engaged in a conspiracy of silence.

External review and investigation of police conduct is emerging as an essential safeguard for free and democratic societies.

CHAPTER 2 ORGANIZING THE COMMISSION

The Chairman of the RCMP Public Complaints Commission was appointed on February 1, 1988. At that time, the Commission had no other members, no staff, and no office.

The Chairman's objective was to have the Commission operational as quickly as possible. He was anxious to accommodate the Government's desire that public expectations with respect to the availability of an independent complaints body be met. That objective was very much related to the issue of retrospectivity. If the legislation was not retrospective in its application (see Chapter 6), incidents that occurred before the Commission became operational would be outside its jurisdiction.

The Commission's success in getting organized in such short order was due to the tremendous co-operation it received from officials in the central agencies of government, the Solicitor General's Secretariat and the RCMP.

Seven Months of Preparation

The Chairman's objective was to have the Commission operational in six months. In fact, it took seven.

During the seven-month period:

- intensive discussions were held with the central agencies and the Solicitor General's Secretariat to obtain office accommodation, financial resources and personnel;
- temporary accommodation was found in the Fontaine Building in Hull, and planning began for the establishment of a permanent location;
- at the request of the Solicitor General, the Chairman held the required statutory consultations with provincial and territorial ministers

responsible for policing with regard to the appointment of part-time members from their jurisdictions;

- part-time members were appointed for the eight provinces having contracts for RCMP policing, and the Yukon, along with two members-at-large (one from Ontario and one from Quebec), and a number of alternates. The member for the Northwest Territories and his alternate were appointed later;
- the Vice-Chairman was appointed;
- recruitment of Commission staff proceeded as quickly as possible, with the Executive Director, the Director of Complaints (East), General Counsel, Senior Communications Advisor, Office Manager, one complaints officer, and essential clerical and secretarial personnel all in place by September 30. The Director of Complaints (West) and a second complaints officer had been selected by that date, and came on strength in the months that followed;
- legal advice was obtained on a number of issues: Part VII's retrospectivity; the application of administrative law principles to the public complaints process; the relationship of the RCMP's discipline process to the public complaints process; the extent to which the complaints process could be open to the public in light of the *Privacy Act*;, and the respective roles of the Chair-man and the Commission;
- internal procedures were developed to handle the reception and referral of complaints, and steps were taken to computerize complaints record-keeping;
- advice was obtained and progress made in the development of draft rules of practice and procedure for use at Commission hearings;
- meetings were held with officials responsible for policing in all 10 provinces and both territories, and with all provincial police commissions and

similar bodies with responsibilities for public complaints against police, the purpose being to draw on their experience and discuss appropriate co-operation and co-ordination mechanisms;

- frequent meetings and consultations were held with personnel at RCMP Headquarters in Ottawa to obtain background, explain the Commission's functions and requirements, and discuss the development of compatible procedures and other matters;
- the Chairman visited nearly all the Force's divisions to meet with Commanding Officers and other senior personnel to discuss the complaints process; addressed the Divisional Representatives' and Commanding Officers' Conference in Ottawa in March 1988; and arranged to send a personal letter to each RCMP member explaining the role of the Commission;
- work began on a communications strategy for the Commission;
- a toll-free 1-800 number was installed to provide members of the public with easy access to the Commission;
- the Chairman, Vice-Chairman and staff attended the September 1988 International Association for Civilian Oversight of Law Enforcement conference, in Montreal, to learn from those with similar responsibilities in other countries.

First Six Months of Operations

The Commission's experience in complaint handling in the first six months of operations is discussed in Chapter 4.

Organizational and administrative highlights from September 30, 1988, to March 31, 1989, included:

- planning and developing the Commission's permanent headquarters at 60 Queen Street, Ottawa (to which the Commission moved on May 1, 1989);
- planning and developing a regional office in Vancouver to serve British Columbia and the Yukon (which opened on May 15, 1989);
- planning for regional offices in the Prairies and the Atlantic Provinces, their development being subject to allocation of resources to the Commission;
- recruiting a Regional Director for the Vancouver office, three additional complaints officers (one for Vancouver) and a Senior Policy Advisor; the Commission's staff, including the Chairman and the Vice-Chairman, standing at 20 by the end of March;
- beginning the recruitment of a number of experienced and capable former police officers (non-RCMP) across Canada, to conduct inquiries on an as-needed basis;
- making substantial progress in developing a computerized complaints record-keeping system and initiating discussions with the Force to develop compatible data-processing systems;
- finalizing of draft rules of practice and procedure;
- the first full meeting of the Commission in Ottawa in early December, the major topics of discussion being the retrospectivity issue, draft rules of practice and procedure, the respective roles of the Chairman and the Commission, and plans for the Commission's development;
- on the day preceding the first meeting, holding a seminar for Commission members to which representatives of the Force, the Solicitor General's Secretariat and the External Review Committee were invited, presentations on the role and pro-

cesses of the Commission, the RCMP's own process for handling public complaints, the Force's views on Part VII, how Native people feel about making complaints about RCMP conduct, and the experience of others in dealing with police complaints;

- the Chairman meeting a number of representatives of civil liberty groups and Native people's organizations, making a written submission to the Marshall inquiry in Nova Scotia, and appearing before the Manitoba Inquiry into the Administration of Justice and Aboriginal People, to explain the role of the Commission;
- the Chairman addressing the RCMP Fall Conference of Divisional Representatives and Commanding Officers in Regina;
- conducting research on provincial legislation dealing with public complaints about police conduct;
- developing conflict of interest guidelines and taking steps to ensure that Commission members and staff meet government requirements.

* * *

The *RCMP Act* provides that the Commission's head office shall be in such place in Canada as the Governor in Council designates. An order in council, dated December 18, 1986, designated Ottawa. There will be a need for regional offices to give Canadians easy access to the Commission and enable it to operate effectively. As noted, the first regional office, in Vancouver, opened in May 1989.

COMPLAINTS

PART II

CHAPTER 3 COMPLAINTS FORECAST

This chapter contains a forecast of the number and geographical distribution of complaints that will be dealt with annually under Part VII of the *RCMP Act*.

Complaint Volume and Distribution

Based on RCMP experience over the past six years, it is expected that at least 2,000 complaints a year will be made under Part VII in the foreseeable future.

The distribution of complaints will significantly influence how the Commission provides the public with access to its services, whether through the opening of regional offices or otherwise.

The forecast is important because the first six months of the Commission's operations do not present an accurate picture of what will likely be the typical workload of the Commission in the future.

The reasons for this are three-fold. First, the Commission considered it should not deal with complaints about incidents that occurred prior to September 30, 1988, until such time as the Federal Court of Canada has ruled on the retrospectivity issue.

Second, before a complainant dissatisfied with the RCMP's disposition of the complaint can ask the Commission to review the matter, the complaint must have been investigated and reported on by the RCMP. That process is currently taking several months.

Third, the Commission is not yet well known to the public. This will change once it has held a number of hearings and has implemented its communications strategy.

Tables 2 and 3 give an idea of the volume of complaints that should be subject to the Part VII process at the present time, as well as their expected geographical distribution.

The tables show that:

- the average number of complaints was about 2,000 annually;
- between 1983 and 1987, nearly 40% of the complaints arose from incidents in British Columbia; in 1988 the percentage was 45%;
- approximately 80% of the complaints arose in the four western provinces;
- less than 10% arose in Ontario and Quebec combined; and
- approximately 12% arose in the four Atlantic provinces.

There are significant differences between the geographical distribution of RCMP members (Table 1) and that of complaints (Tables 2 and 3). For instance:

- 25% of Force members are located in British Columbia, but 40% (45% in 1988) of complaints arise in that province;
- Alberta has 13% of the Force and generates 17% of the complaints;
- seven per cent of the Force is in Quebec, where the RCMP does not provide provincial or municipal police service, but complaints from that province represent less than two per cent of the country-wide total;
- the four Atlantic Provinces have 13% of the Force (excluding the recent RCMP takeover of New Brunswick's provincial traffic patrol) and have generated 11% of complaints (average over six years).

These differences are largely attributable to the kind of policing services the Force provides in each region and the nature of its contacts with the public.

TABLE 2
Distribution of Complaints Received by the RCMP Against Force Members, 1983-88
Number of Complaints

Year	Pacific Region	Prairie Region	Central Region	Atlantic Region	Total
1983	847 (823 B.C., 24 Y.T.)	719 (360 ALB., 170 SASK, 162 MAN., 27 NWT.)	186 (150 ONT., 36 QUE.)	257 (83 N.B., 82 N.FL., 77 N.S., 15 PEI)	2,009
1984	767 (738 B.C., 29 Y.T.)	826 (378 ALB., 226 SASK, 178 MAN., 44 NWT.)	140 (112 ONT., 28 QUE.)	236 (57 N.B., 87 N.FL., 80 N.S., 12 PEI)	1,969
1985	491 (472 B.C., 19 Y.T.)	477 (139 ALB., 171 SASK, 144 MAN., 23 NWT.)	74 (61 ONT., 13 QUE.)	189 (28 N.B., 63 N.FL., 93 N.S., 5 PEI)	1,231*
1986	634 (623 B.C., 11 Y.T.)	753 (374 ALB., 164 SASK, 174 MAN., 41 NWT.)	159 (140 ONT., 19 QUE.)	129 (12 N.B., 35 N.FL., 71 N.S., 11 PEI)	1,675
1987	868 (848 B.C., 20 Y.T.)	909 (410 ALB., 126 SASK, 293 MAN., 80 NWT.)	208 (167 ONT., 41 QUE.)	261 (75 N.B., 70 N.FL., 99 N.S., 17 PEI)	1,675
1988	989 (977 B.C., 12 Y.T.)	800 (349 ALB., 167 SASK, 239 MAN., 45 NWT.)	169 (138 ONT., 31 QUE.)	199 (39 N.B., 39 N.FL., 95 N.S., 26 PEI)	2,157

* Owing to the introduction of a new computer system, the 1985 statistics are considered inaccurate

TABLE 3
Distribution of Complaints Received by the RCMP Against Force Members, 1983-88
Percentage

Year	Pacific Region	Prairie Region	Central Region	Atlantic Region
1983	41 % B.C. / 42 % YUK.	36 % — ALB. 18, SASK. 9, MAN. 8, NWT. 1	9 % — ONT. 7, QUE. 2	13 % — N.B. 4, NF 4, NS. 4, PEI 1
1984	39 — B.C. 37, YUK. 2	42 — ALB. 19, SASK. 12, MAN. 9, NWT. 2	7 — ONT. 6, QUE. 1	12 — N.B. 3, NF 4, NS. 4, PEI 1
1985*	40 — B.C. 38, YUK. 2	39 — ALB. 11, SASK. 14, MAN. 12, NWT. 2	6 — ONT. 5, QUE. 1	15 — N.B. 2, NF 5, NS. 7.6, PEI 0.4
1986	38 — B.C. 37, YUK. 1	45 — ALB. 22, SASK. 10, MAN. 10, NWT. 3	9 — ONT. 8, QUE. 1	8 — N.B. 1, NF 2, NS. 4, PEI 1
1987	39 — B.C. 38, YUK. 1	40 — ALB. 18, SASK. 6, MAN. 13, NWT. 3	9 — ONT. 7, QUE. 2	12 — N.B. 3, NF 3, NS. 5, PEI 1
1988	46 — B.C. 45, YUK. 1	37 — ALB. 16, SASK. 8, MAN. 11, NWT. 2	8 — ONT. 7, QUE. 1	9 — N.B. 2, NF 2, NS. 4, PEI 1

** Owing to the introduction of a new computer system, the 1985 statistics are considered inaccurate*

Complaints Justification

The RCMP found that, in each of the past two years, 22% of complaints were justified or substantiated. It concluded that 24% in 1987 and 21% in 1988 were unsubstantiated, and that 54% in 1987 and 57% in 1988 were unfounded.

The RCMP's distinction between "unsubstantiated" and "unfounded" appears to be that the latter means the complaint had no basis, while the former means that the complaint cannot, in the view of the Force, be established one way or the other.

Whether or not complaints brought under Part VII of the *RCMP Act* will be disposed of in a similar manner is a matter for conjecture at this point.

Counting Complaints

For the Commission's purposes, separate complaints are generally regarded as being made with respect to each Force member and to each distinct matter of complaint.

Suppose, for instance, that Constables A and B together arrest a woman on the highway, and take her to their detachment. The woman later complains that both constables used excessive force at the time of the arrest, and that, an hour later, Constable A was rude to her at the detachment. There would be two complaints against A, and one against B.

Each Force member should be treated separately. A complaint against one may turn out to be justified. Against the other, it may not.

Where allegations are made against one member in respect of a number of very closely related matters that occurred in a very short time frame in a single incident, it may be appropriate to include these matters in a single complaint. Each situation must be examined on its own merits.

CHAPTER 4 COMPLAINTS EXPERIENCE

This chapter discusses the complaints handled by the Commission in its first six months of operation: from September 30, 1988, when Part VII of the *RCMP Act* came into force, to March 31, 1989, the end of the Commission's reporting year.

These are complaints that were made directly to the Commission in the first instance, complaints initiated or investigated by the Chairman, and those referred to the Commission for review by complainants dissatisfied with the RCMP disposition of their complaints.

They represent only 13% of the 1,081 complaints made to the RCMP under Part VII during the period in question.

In order to prepare a general analysis of all 1,081 complaints, the Chairman asked the RCMP Commissioner in February 1989 to provide the necessary information. The RCMP began sending the information in mid-April. At the time of writing, the information was insufficient to integrate into this chapter.

The Commission's difficulties in obtaining information from the RCMP are discussed in Chapter 5.

Complainants may make their complaints under Part VII, in the first instance, to the Commission, to any member of the RCMP or other person appoined under the RCMP Act, or to an appropriate provincial authority.

One hundred and forty-three complaints about the conduct of RCMP members were made directly to the Commission by March 31, 1989. These complaints arose from incidents that occurred in the previous six months. Complaints that arose from incidents

occurring prior to September 30, 1988, are discussed later in this chapter.

When a complaint is made to the Commission, the Force is notified.

The Chairman may decide to launch his own investigation or institute a Commission hearing. The Chairman can take this action if he considers it in the public interest to do so. During the first six-month period, the Chairman commenced three complaints investigations on that basis.

The Force must first try to resolve complaints informally, whether they are made to it directly, or indirectly through the Commission or provincial authorities. If the complaint is not resolved informally, the Force must then investigate it. The statute requires the Force to provide the complainant with a status report within 45 days of being notified of the complaint and monthly thereafter until a final report is made. If the complainant is dissatisfied with the Force's disposition of the matter, he or she may refer the complaint to the Commission for review.

Six requests for review had been referred to the Commission by March 31, 1989. Such requests (referrals) are required, by statute, to be in writing. The Commission has received a number by telephone, and has advised the complainants of this requirement.

Once the Commission receives a referral, the Force is notified and is required to provide the Chairman with a copy of the report and such other material under the control of the Force as is relevant to the complaint.

Complaints Made to the Commission

Table 4 provides a breakdown, by region, of the 143 complaints made to the Commission in its first six months of operations. They relate to incidents that occurred on or after September 30, 1988.

Of the 143 complaints, 117 were received by telephone, 25 by letter and one in person.

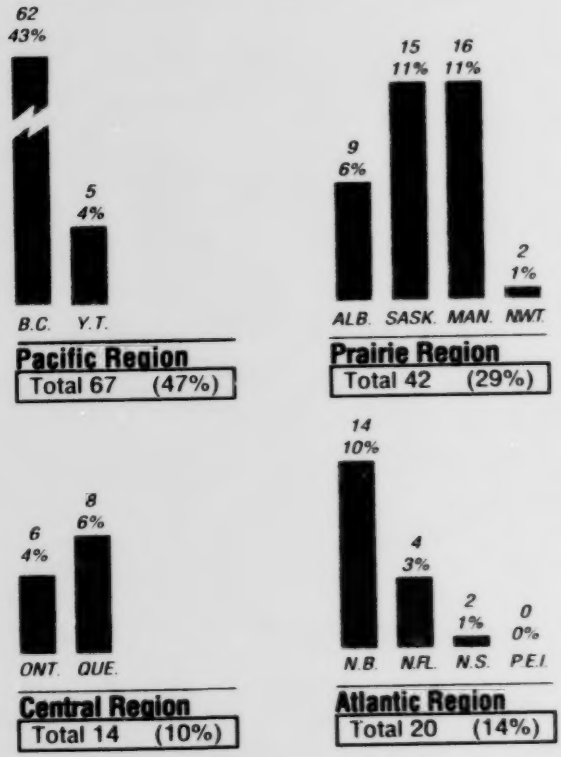
The complaints have been placed in the following five categories:

- *Attitude*: complaints that describe the member as being curt or discourteous, or as having a poor attitude;
- *Inadequate Service*: complaints that describe the failure of a member to act, lay a charge, or to provide adequate or satisfactory service;
- *Conduct of Investigation*: complaints that describe inadequate, insufficient or improperly conducted investigations, delays in investigation, entry of premises by force, improper search of premises, unjustified retention of property, seized property returned in damaged form, failure to identify as a member of the Force, or failure to read rights;
- *Oppressive Behaviour*: complaints that describe interfering conduct, harassment, unsatisfactory treatment while under arrest, entrapment, unjust charge, bias and deliberate omission, threat or intimidation, denial of freedom of expression, no justification for photographing and fingerprinting, or holding a person in custody without treating injuries; and
- *Excessive Force*: complaints that describe excessive use of force, assault while in custody, or assault while not in custody.

Table 5 provides a breakdown, by category and province (or territory), of the complaints received.

TABLE 4

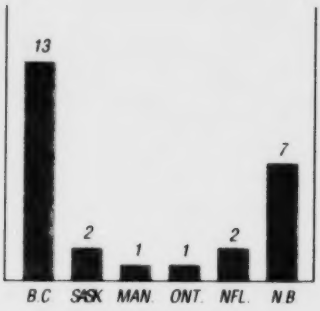
Complaints Made to the Commission Between September 30, 1988, and March 31, 1989, by Region



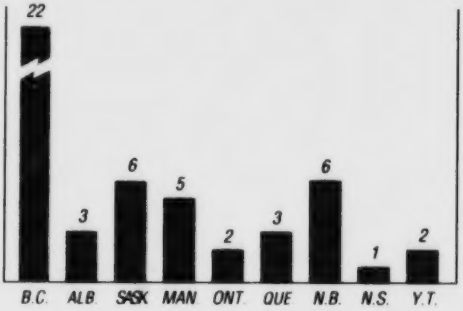
Total Complaints — 143 (100%)

TABLE 5

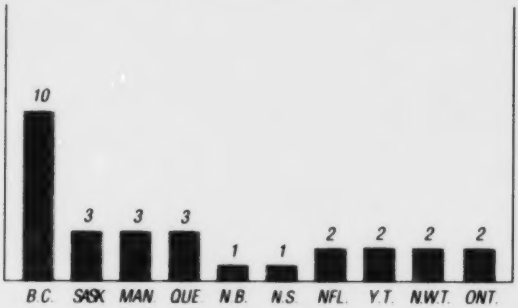
Breakdown, by category and province (or territory) of complaints



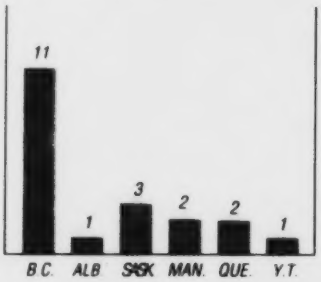
(Attitude — 26)



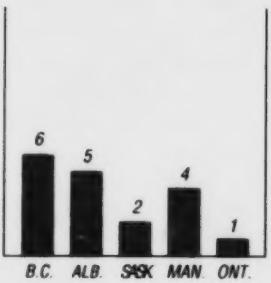
(Inadequate Service — 50)



(Conduct of Investigation — 29)



(Oppresive Behaviour — 20)



(Excessive Force — 18)

Total 143

Following are eight examples taken from the 143 complaints received. None has yet reached the stage of being referred to the Commission for review.

Excessive force
A woman complained to the Commission that a member of the RCMP had used unnecessary force on her at a remand centre. She alleged that, early one morning in March 1989, she was stopped on a highway in Alberta by members of the RCMP. She was arrested for impaired driving and then taken to an RCMP detachment for a breathalyser test. At the detachment, she refused to answer any questions or allow the RCMP to take her fingerprints. The woman was then taken to a remand centre where she was incarcerated pending a court appearance later in the day. At the remand centre, she alleges, a female member of the RCMP pushed her against a wall, pulled her hair and kicked her, causing bruises to her ankles.

Oppressive behaviour
A woman telephoned the Commission to complain about what she described as oppressive conduct by RCMP members during searches conducted by them. She alleged that, in October 1988, two members of the RCMP came to her residence in a small Quebec community to arrest her former common-law spouse for whom they had a warrant. The RCMP members returned on two more occasions that day before they were able to find the man they were looking for. The first time they visited the woman's residence, she asked that they not question her mother who lived next door as she had just returned from hospital after undergoing three major operations in the past six weeks. According to the woman, the RCMP officers went to her mother's residence and questioned her anyway. They returned later that day and, at 10 p.m., came a third time, on which occasion they arrested the man they sought. The woman complained that she was not given the choice or the time to read the arrest warrant; that

the members contacted her mother despite her request that they refrain from doing so; and that the search of her residence had traumatized her children to the point that one of them suffered an epileptic attack.

Attitude
A woman telephoned the Commission to complain about the attitude of an RCMP member. She stated that, in December 1988, she was conducting a search in a city in the Atlantic provinces for her teenage daughter who had run away from home. The woman located her daughter who refused to accompany her to the family home. The mother contacted the local municipal police, who took the daughter into custody and brought her to the city police station. After being contacted by the city police, a member of the RCMP came to the police station and drove the girl to the local welfare office. During a conversation with the girl at the welfare office, the RCMP member allegedly made numerous disparaging comments about the girl's family.

Attitude
A woman complained to the Commission that a constable was rude to her and that she was wrongfully charged with driving offences. She alleged that, early one morning in February 1989, she was driving her car in a small town in Saskatchewan when she was stopped by an RCMP constable who accused her of driving in a careless manner. She attempted to explain to the constable that her car had accidentally fish-tailed on the icy roadway. However, the constable did not believe that the incident was accidental. She claims that a discussion then ensued during which the constable became irate and verbally abusive towards her. Since the situation was becoming intolerable, the woman drove off with the constable in pursuit. The woman was charged by the constable with various criminal driving offences relating to the incident. In her opinion, the charges were unwarranted.

Conduct of investigation
In December 1988, a fatal traffic accident occurred near a small town in one of the Atlantic provinces. The RCMP member who went to the scene allegedly radioed for a rescue team some five to eight minutes after he arrived. As well, the member would not permit other people at the scene to check the automobile to see if the occupants had survived the accident. According to the complainant, the officer threatened to charge them if they did not follow his instructions not to check the vehicle. A relative of the victims wrote to the Attorney General of the province complaining that the attending RCMP officer had not been prompt in contacting the rescue team and that he had inappropriately restrained the bystanders. This complaint was forwarded to the Commission by the Attorney General's Office.

Conduct of investigation
A woman complained that criminal charges against her boyfriend were made without substance. She recounted that, in October 1988, her boyfriend went to the residence of his ex-wife and took his children on an outing. Upon returning the children to his ex-wife's residence, the man found his ex-wife in bed with another man. The man believed that this situation was intended by his ex-wife to provoke a confrontation. The man left the residence and went to his girlfriend's. Apparently, the man's ex-wife telephoned a RCMP detachment and reported that she had been assaulted by her ex-husband. Subsequently, the RCMP charged the man with several assault offences.

A few days after this incident, the man's girlfriend complained to the Commission that the RCMP had failed to conduct a proper investigation prior to laying the criminal charges against her boyfriend and that the charges were made without substance.

Inadequate service
In December 1988, in a small rural town in one of the Atlantic provinces, members of the local church telephoned the RCMP detachment to complain about a theft at the church. After not having been contacted by the RCMP for a number of days, a personal visit was made to the detachment. Apparently, there was no record of the original call. The church group wrote a letter of complaint to the Attorney General of the province about the incident. In the same letter they also noted that members of that same group had contacted the local detachment one night in December at around 11 p.m. to complain about several criminal activities occurring at a teenage dance. However, no RCMP member responded to their request for assistance. A follow-up telephone call was made the next day and the church group was informed that the RCMP had gone to the scene at 1:30 a.m., some two and a half hours after the call was made. The Attorney General's office forwarded the complaint to the Commission.

Inadequate service
A man complained to the Commission that members of the RCMP refused to investigate his report of assault and theft of his car. He explained that, in January 1989, he was travelling on a highway in British Columbia with two of his relatives and two other passengers whom he did not know. Upon stopping at the side of the highway to clean the windshield of his car, the two unidentified passengers assaulted him. They then drove away with his car, leaving him stranded. The man then went to an RCMP detachment and reported the incident to several members who refused to record his report or assist him in recovering his car. Several days later, the man went to another RCMP detachment and reported the same incident to another member of the RCMP who recorded the man's report, but did not take any further action.

Complaints Made by the Chairman

The Chairman may initiate a complaint when he is satisfied there are reasonable grounds for doing so.

He has thus far initiated one complaint. The information given to him, on an anonymous basis, suggested that excessive force might have been used in what appeared to be the arrest of a woman by RCMP officers at a major Canadian airport.

After concluding in late March, 1989, that, in the circumstances, there were reasonable grounds for initiating a complaint, the Chairman notified the Solicitor General and the RCMP Commissioner, as required by the statute.

A report from the RCMP is expected in due course.

Chairman's Investigations

The Chairman may investigate a complaint, or institute a Commission hearing, where he considers it advisable in the public interest. He may do so whether or not the complaint has been investigated, reported on or otherwise dealt with by the Force under Part VII.

In the first six months of operations, the Chairman launched three such investigations, but has instituted no "public interest" hearings.

Following are summaries of the three complaints under investigation. The first investigation commenced in February, the other two in March. All three are continuing. The Chairman may institute a Commission hearing to inquire into one or more of these complaints if the investigations reveal such action is justified.

Arrest procedures
A complaint was lodged with the Commission alleging that an RCMP dog handler, while arresting the complainant's 19-year-old stepson, deliberately and improperly released his dog and allowed it to attack and repeatedly bite the youth. In addition, it was said that the two other officers assisting in the arrest used excessive force. Subsequently, when the youth was taken to the detachment office, another member allegedly made light of the fact that the youth had been bitten and injured. In addition, while the youth was held in police cells for almost 24 hours, he was apparently not provided with clothing, a mattress or blanket and was not fed or given anything to drink. In the Chairman's view, the issues raised by this complaint, including those related to the use of police dogs and the handling of prisoners, were of sufficient importance that an investigation in the public interest should be initiated.

Freedom of the press
The president of a newspaper guild complained that a British journalist had been improperly detained and questioned when he entered Canada at a major airport. He was apparently questioned for between one and two hours about his news stories on terrorism and secret service organizations. The complainant considered that this constituted unwarranted harassment toward the journalist. The Chairman decided to launch an investigation. In his view, the complaint raised issues about the freedom of the press as well as other Charter issues, all of which are a matter of public interest.

Excessive force and freedom of expression
An individual who had obtained a demonstration permit from the Regional Municipality of Ottawa-Carleton complained that he had been prevented from deploying the banner he wanted to display during a visit by the President of the United States to Ottawa. He further complained that

excessive force had been used against him to prevent him from exercising his right to freedom of expression. On further examination of the complaint, the Chairman concluded that it was in the public interest to look into these allegations.

Chairman's Reviews

Six complaints were referred to the Commission for review during the first six-month period. The first was received by the Commission on March 16, and the other five arrived in the two weeks that followed.

Shortly after the Commission received each request for review, it notified the Force and requested reports and other relevant information.

By May 19, the Chairman had not received the reports and other information required from the RCMP. The lapse of six to eight weeks from notification is not encouraging for a process in which complainants should not have to endure undue delay. Some of these complaints had been originally initi-ated in the last three months of 1988. It is to be hoped that the Force will respond with greater speed in the future.

The Chairman has been unable to proceed with the six requests for review because he does not have the essential material before him.

Hearings

In the first six months, the Commission held no hearings.

Hearings can only be instituted after a review has taken place or where the Chairman has concluded that it is in the public interest. As noted, the Chairman has completed no reviews or investigations.

Complaint Incidents Prior to September 30, 1988

The Commission's present position, based on legal advice, is that it should not assume jurisdiction over complaints about incidents that occurred before September 30, 1988, irrespective of whether the complaint was made before or after that date, unless and until the Federal Court of Canada rules to the contrary.

Seventeen complaints concerning the conduct of Force members were brought to the Commission's attention prior to September 30. Eight were complaints made for the first time. In nine instances, the problem had already been brought to the attention of the RCMP and, in two of these, the Force had apparently failed to dispose of the matters to the complainants' satisfaction.

After the Commission became operational on September 30, 1988, it received 54 complaints about incidents occurring prior to that date. It also received a further 25 requests for review (referrals) from complainants dissatisfied with the RCMP's disposition of complaints they had already made about incidents occurring prior to September 30, 1988.

Should the Federal Court determine that the Commission has jurisdiction, these complainants will be advised accordingly. Such a determination could have a significant impact on the Commission's workload. The retrospectivity issue is discussed in Chapter 6.

CONCERNS AND ISSUES

PART III

CHAPTER 5 FOUR SPECIAL CONCERNS

This chapter discusses four concerns:

1. the scope of "conduct" in Part VII of the *RCMP Act*;
2. the availability and quality of RCMP information;
3. RCMP practices with respect to "voiding" tickets; and
4. RCMP practices in operations abroad in relation to the conduct of Force members in a specific foreign operation.

The first two issues relate to the general application of Part VII. The third and fourth deal with particular situations that came to the Chairman's attention during the first six months of operation and are of significant interest to the public.

The Chairman concluded that the ticket voiding matter could best be dealt with in this report, without the Commission having to take further action. As for the foreign operation, he decided to initiate a complaint and commence an investigation in the public interest.

1. The Scope of "Conduct"

Discussions between the Commission and RCMP officials have revealed a possible difference of view with respect to the application of Part VII to the adequacy of policing services. RCMP officials have indicated that complaints about failure to respond quickly, to investigate a matter, or lay a charge relate not to conduct but rather to policy, service and performance. In the Force's view, they are thus outside the scope of Part VII.

By limiting the scope of conduct, the Force has within its power the opportunity to deprive a complainant of recourse to Part VII, without the complainant being informed of the possibility of seeking such recourse and without the Commission knowing that the complaint had been made.

In certain instances, of course, the exercise of this power will be appropriate. If a complaint is made about RCMP policy, without reference to the conduct of a member, it is clearly outside the scope of Part VII. But what about cases where it is arguable that the complaint does fall within Part VII, and the Force unilaterally decides to treat the complaint as outside Part VII? There should be some way of monitoring the Force's decision-making in this respect to ensure that each complainant is treated fairly and properly.

The Chairman believes that the negligence, incompetence or maliciousness of a police officer in conducting an investigation is a matter of "conduct in the performance of any duty or function" under the *RCMP Act*. If a member of the public is charged with an offence and subsequently acquitted, and if it appears that there were no reasonable and probable grounds for laying the charge, the person should be able to make a complaint.

The Chairman believes the same considerations apply to the failure of the police to respond to calls for police assistance.

Part VII was enacted by Parliament to provide the public with the right to independent review and inquiry. The Force cannot be allowed to restrict the scope of that right arbitrarily.

2. Availability and Quality of RCMP Information

The Chairman has been disappointed with the Force's response to requests for information.

Delays: referrals

On March 16, 1989, the Commission received its first referral by a complainant dissatisfied with the Force's disposition of his complaint. Five more referrals were received by the end of March.

The Chairman provided the RCMP Commissioner with copies of the complaints, notifying him of the first referral on March 22, and of the other five by April 7.

On being notified of a referral, the RCMP Commissioner is required to provide the Chairman with the report sent to the complainant, and with such other materials under the control of the Force as are relevant to the complaint.

By the end of May, the Chairman had received no reports or explanatory material about any of the six referrals. He has thus been unable to proceed with the reviews.

This kind of delay is unacceptable, and the RCMP has been so advised on several occasions. The Force has indicated that the delays have been caused by the newness of the process and by the need to vet each referral at the Division in question and at RCMP Headquarters. The Force agrees that a one-month period for supplying the material would be reasonable and that is now its goal.

There is no reason why the reports could not be sent to the Commission at once, along with the explanatory material where possible. Since the Force will have already made the report to the complainant and the Force member involved, there is no justification for not sending it to the Commission immediately. If the RCMP needs additional time to decide what it considers relevant, then the explanatory material could be forwarded after the report. In no case, however, should the process take longer than one month.

Another unsatisfactory aspect of this process is that the RCMP decides what material is relevant. There is no provision for monitoring or review of that decision-making process. The Chairman, in the review process, will have no means of knowing whether the Commission has received all the material that should have been sent. If, however, it were necessary to have a Commission hearing, it would presumably be possible for excluded relevant material to be revealed through the subpoenaing of files and the cross-examination of witnesses.

Delays: public interest investigations

As discussed in Chapter 4, the Chairman has instituted three investigations in the public interest.

The Force has been slow in providing the Commission with files and other information on the first of the three. The delay falls only slightly short of a refusal to supply what has been requested.

Parliament has empowered the Chairman to "investigate" in particular circumstances, but has not spelled out what specific powers of investigation he is intended to have. He has not been given powers to summons witnesses and examine them, or to enter and search premises. While such powers may not be required, surely Parliament intended, by conferring the power "to investigate", that the RCMP be required to respond positively to requests for interviews of Force members and for pertinent documentation. This matter is discussed in greater detail in Chapter 7.

The progress of the Chairman's first investigation is outlined below because it illustrates the difficulties the Commission is encountering.

> *January 30, 1989*: The Public Complaints Commission receives several complaints against four members of an RCMP detachment in Western Canada.

February 16: The complaints are forwarded to the RCMP Commissioner together with the Chairman's notice of his intention to investigate the complaints in the public interest.

February 18: The Executive Director of the Commission meets with an Assistant Commissioner of the RCMP, who is advised that the Commission's investigators will be commencing their investigation immediately and that they will need to examine and make copies of materials, reports and documents relating to the Force's internal and operational investigations.

February 20: The Commission's investigators conduct an investigation which includes interviews with the complainant, a number of witnesses and the RCMP members involved. The investigators are given an opportunity to examine the relevant operational files. They make notes but, because of lack of time, do not conduct a complete analysis of the files.

March 7: The Commission's Executive Director writes to the RCMP requesting that the operational file or files and the members' notebooks be provided. A reminder letter is sent on March 30.

April 11: The Executive Director of the Commission and the RCMP Deputy Commissioner in charge of Administration discuss the request. During this meeting the Executive Director is advised that the Force's position is that operational files are never released unless a subpoena is issued requesting that they be brought to Court.

April 12: A subsequent meeting is held between the Commission's General Counsel and Director of Complaints and the Force's General Counsel and Senior Administration and Personal Officer to further discuss the matter. The Commission representatives are advised that the Force will be prepared to release the operational files only if the Chairman is to be designated as an investigative body by regulation under the *Privacy Act* or if the

Commission obtains the consent of all individuals whose names appear in the files to be examined.

May 1: The Commission receives a letter from the RCMP Senior Administration and Personnel Officer, along with certain materials which had been requested relating to training and operational procedures involving the use of dogs and the custody and care of prisoners detained in RCMP cells. The operational files and members' notes which had been requested on previous occasions are not provided, but the letter advises that "other requested material and information will be forwarded to you once it is received from the appropriate responsibility centres".

May 31: No further information or material had been received from the Force. In particular, the operational files and members' notes initially requested on March 7, 1989, had not been received. Consequently, the Commission has not been able to proceed with the investigation.

The suggestion that the Chairman must be designated an investigative body under the *Privacy Act* before the files can be released to him is questionable. Parliament has already empowered the Chairman to conduct investigations in the public interest.

In addition, the *Privacy Act* allows the disclosure of the information requested to the Chairman. For example, paragraph 8(2)(a) permits the disclosure of personal information for a use consistent with the purpose for which the information was originally obtained. The information in the RCMP notes and operational files is information collected while investigating the incident that gave rise to the complaint. This appears to be a consistent use.

The *Privacy Act* also permits the disclosure of personal information where the public interest in disclosure outweighs any invasion of privacy. A public interest investigation under Part VII of the *RCMP*

Act should certainly be a public interest matter under the *Privacy Act*. It is also in the public interest to avoid the expense of holding hearings to obtain files from the RCMP that the Force refuses to provide the Chairman.

At the end of May, the Commission learned that the RCMP is in the process of reviewing information for release to the Commission.

Disclosure of information on the record

The Chairman had thought that the RCMP would provide the Commission, in a timely way and as a matter of course, information on all complaints made under Part VII, whether they were made in the first instance to the Commission, an RCMP member, or a provincial authority.

Unless the Force provides such information, the only complaints the Commission will be aware of, in most circumstances, are those that have been made in the first place to the Commission and those referred to the Commission by complainants dissatisfied with the Force's disposition.

Only 13% of all complaints have thus far been sent directly to the Commission, and referrals are relatively few in number.

There are at least two important reasons why the Commission should have information on all Part VII complaints:

- first, it is essential that the Chairman be able to review all complaints shortly after they are made so that he can determine whether he should exercise his statutory powers to investigate or institute a hearing as a matter of public interest; and
- second, he must be able to inform Parliament in his annual report on how the public complaints process is working, with such recommendations as are considered appropriate.

The Chairman was disappointed to learn in January that the RCMP did not intend to provide the Commission with information on all complaints received by the Force. At that time the Chairman became aware of the RCMP Commissioner's Standing Order, made on October 4, 1988, requiring that the Commission be notified only of the disposition of complaints that had been made directly to the Commission in the first instance.

The *RCMP Act* requires the RCMP Commissioner to establish and maintain a record of all complaints received by the Force, and to make available to the Commission, on request, any information contained in the record.

Accordingly, on February 3, the Chairman wrote the RCMP Commissioner to ask that he make available all pertinent information on the record. The Chairman explained his reasons for the request, adding that there was some urgency since Part VII had been in force for four months and the information was needed for this annual report. The Chairman suggested that the Commissioner consider amending his Standing Order so that it would apply to all complaints the Force received under Part VII.

In the RCMP Commissioner's response of March 22, he stated that it was the Force's position that it would supply the Commission, on a weekly basis, with:

- a copy of each Form 1442 (the Force's complaint form) where complaints have been disposed of informally; and
- a copy of each Form 1442, interim reports, and final reports, where complaints had been investigated, once the investigations were completed.

He informed the Chairman that the Force's interpretation of the "record", for this purpose, is the Form 1442, as well as status and final reports of Force complaint investigations. Form 1442 includes the

name of the complainant, details of the complaint, the name of the person complained about, acknowledgement of the complaint, its informal disposition or "an indication that the complaint will undergo the formal PCC process".

On March 31, the Chairman responded by asking that the information on the record be made available in two steps. The first would be provision of the Form 1442 as soon as reasonably possible after a complaint was received, to enable the Chairman to determine whether a public interest investigation or hearing was warranted. The second step would be when the Force had disposed of the complaint, either by informal resolution or a final report. The Chairman also pointed out that the Commission had yet to receive any information pursuant to his request of February 3.

It had become apparent that the Force did not have information as readily available as might be expected. The information was not centralized but located in the operational divisions of the Force. In short, the Force was not as prepared for Part VII as it should have been.

In his March 31 letter, the Chairman encouraged the RCMP Commissioner to accelerate whatever steps the Force was taking to develop a centralized record-keeping system. He suggested that the Force and the Commission examine the desirability of developing compatible data-processing systems that would serve their mutual interests.

The RCMP Commissioner subsequently agreed to explore compatible data-processing systems. Commission and Force officials have since begun discussions.

However, the RCMP Commissioner, in his response of May 12, did not meet the Chairman's requests for the two-step provision of information on all complaints. He stated that the Force's interpretation of

the *RCMP Act* is that Parliament had intended the Commissioner to make information on the record available on specific requests from the Commission relating to individual complaints. It was on that basis, he said, that his Standing Order had been written. However, in light of the new reporting system desired by the Commission, the Commissioner said it was his intention to revoke the Standing Order.

The RCMP Commissioner reiterated his willingness to supply information on all complaints listed in the weekly reports once the record was complete. He also said he was now prepared, in light of the Chairman's representations, to supply additional ongoing information, prior to completion of the record, on specific identified complaints.

The Commissioner thought this would meet the Chairman's needs for the purpose of determining which complaints should, in the public interest, be subject to a Chairman's investigation or a Commission hearing.

The Commissioner stated that, since it was not until a complaint was disposed of by the Force that the Commission became involved (other than public interest investigations by the Chairman or hearings by the Commission), his suggested approach would "be a more efficient way to deal with the ongoing information supply".

In regard to the Force's not yet having supplied any of the information requested as of March 31, 1989, the Commissioner said that it was only after he had made the decision to provide the information on a weekly basis that his personnel began "the assembly of the necessary documentation and data from across the Force to create the weekly reporting system". It was his view that the commencement of the weekly reporting system on April 14 "was a reasonable time frame in which to comply with your request".

The RCMP Commissioner's time frame is reasonable in the circumstances. However, the result is that the Chairman is unable to provide in this report a general analysis of the 1,081 Part VII complaints the Force received between September 30, 1988 and March 31, 1989.

The Chairman will continue discussions with the RCMP Commissioner on the issue of making information on the record available in a way which will meet Commission needs. There has been progress, and the Chairman wishes to acknowledge the RCMP Commissioner's willingness to co-operate.

Quality of information received

Information was first provided pursuant to the Chairman's request on April 14. By May 12, the Commission had information on 296 complaints. Since the Force had received 1,081 complaints during the first six months of the Commission's operations, it had supplied the Commission with information on only 27.4% (296 of 1,081) by May 12. Information on the remainder is being provided on an ongoing basis.

The 296 complaints referred to were all ones that had been disposed of by the RCMP under Part VII: 202 under the informal resolution process and 94 after a formal investigation and report. Of these 94,

- 76 were disposed of with the complainant being provided with reasons in the report,
- 18 were disposed of without reasons being provided, and
- 15 were found to be substantiated.

The Chairman was pleased to see that complainants were given reasons in most instances. However, 18 complainants were not advised why their complaints were found to be "unsubstantiated" or "unfounded". This is unfortunate. A complainant is entitled to an

explanation so that he or she can properly consider whether the Force's disposition is satisfactory and, if it is not, whether recourse should be sought from the Commission.

In the 94 cases, the average time taken between the receipt of the complaint by the RCMP and the making of the report was 66.5 days.

However, the 66.5 day average may well be misleading. The 94 reports are the first the Commission has received. They may represent complaints that could be most readily investigated and reported on. When the Commission has received information on those of the 1,081 complaints that have been formally investigated and reported on, the average time taken by the RCMP to handle complaints may be significantly different.

The reporting function is one that the RCMP Commissioner is entitled to delegate under the *RCMP Act*. By a Delegation of Authority made on October 5, 1988, he delegated it to the Administration and Personnel Officer of each division. However, other Force members have been making reports, including sergeants in charge of traffic patrols. This is improper. The Commissioner's Standing Orders should make it clear who is to make these reports, and the Force should act accordingly.

Reports are required to contain a summary of the complaint. In some instances, the summary was so short that the nature of the complaint could not be determined. In others, the Force's relevant form (Form 1442) contained a note that the statement of the complainant was attached, but no such statement accompanied the form sent to the Commission. Five of the complaint form copies sent to the Commission were illegible. Clearly, there should be greater direction and supervision of reporting, some of which is slipshod.

From the Chairman's perspective, having regard to his responsibility to review complaints to determine whether, in the public interest, he should commence his own investigation or institute a Commission hearing, the information provided by the RCMP on the 296 complaints is not always adequate.

It appears that the statutory requirement that the complainant and the RCMP member involved receive a status report 45 days after the Force receives the complaint, and monthly thereafter until the complaint investigation is completed, is not consistently met.

The RCMP Commissioner's report to the complainant (and the member of the Force involved) must contain a summary of any action that has been taken or will be taken with respect to resolution of the complaint. The reports for the 15 substantiated complaints contained statements as follows:

- in seven, that internal disciplinary action had been (six) or would be (one) taken, without further explanation;
- in four, that corrective measures or remedial action had been taken, without further explanation;
- in two, which were claims for compensation, that liability on the part of the RCMP was acknowledged;
- in one, that an assault charge had been laid and was pending in Provincial Court for a December 1989 date;
- in one, in which an assault had been alleged by the complainant, that the Crown had found that the "allegation was with substance", but that the matter was not proceeded with at the wish of the complainant.

It is questionable whether 11 of these statements meet the requirements of Part VII. Do the reports constitute summaries of the action that has been or will be taken? The issue of whether the complainant

is entitled to know the specific action taken, and the extent, if any, of the jurisdiction of the Commission with respect to discipline is discussed in Chapter 6.

In 28 of the 94 reports, the complainant was not informed, as the statute requires, of the right to refer the complaint to the Commission for review if he or she is not satisfied with its disposition by the Force. This is a serious oversight. Again, there is a need for proper direction and supervision. Some RCMP members appear to have little understanding of the Commission's role. In some cases, complainants were told, without any reference to the Commission, that if they were dissatisfied, they could take their complaints to the Commanding Officer of the Division or the provincial Solicitor General.

Even when the complainant is told about the right to complain to the Commission, its address or telephone number has not been included in all reports. This information should be provided as a matter of course. The Force has a good pamphlet on Part VII and these are sometimes sent with reports.

In a few instances the Force appeared to have difficulty contacting the complainant in order to investigate the complaint. In these cases, the RCMP decided that the complaint could not be properly investigated and a letter to that effect was sent to the complainant. In other instances, a note was placed on the Force's form to the effect that the complaint had been withdrawn.

This kind of complaint treatment requires comment. Once a complaint is made, there is a legal question as to whether the statute permits its withdrawal. Second, if a complaint can be considered as withdrawn, the reason for its withdrawal should be clearly stated on the complaint form if it is known to the Force. And third, if there appears to be any merit in a complaint, it should be investigated by the

Force, regardless of whether the complainant wishes to withdraw it or can be located. The Force would, after all, already have the information contained in the complaint.

Finally, several different forms giving varying amounts of information are being used in Divisions across the country when dealing with the informal disposition of complaints. There is a need for consistent procedures.

To conclude, the quality of reporting should be improved, and the Force should provide proper direction and supervision to that end.

3. Voiding Traffic Tickets

On January 9, 1989, an RCMP corporal was acquitted by a county court judge in Halifax of two charges in connection with the voiding of a traffic ticket for speeding. The charges were (i) attempting to obstruct the course of justice and (ii) committing a breach of trust, by arranging to stop a prosecution under the Nova Scotia *Motor Vehicle Act*.

The ticket had been issued to a car dealer. His dealership sometimes serviced RCMP cars, and apparently there were occasions when he provided cars free of charge to RCMP members, including the charged corporal. It appears these cars were loaned for surveillance purposes because there was no budget at the time to rent vehicles for undercover operations. The constable who issued the ticket voided it at the request of the corporal, who had informed the constable that the car dealer had "done some good things" for the Force.

In acquitting the corporal, the county court judge stated:

> I am satisfied that what he did in fact was the practice in the force at the time. I am not prepared to make him a scapegoat for the actions

> of others which had been commonplace. I can tell you right now that it stinks, and I don't like what I have heard, but that is not the basis for entering a criminal conviction ....
>
> I have stated it before, and I will state it again. I don't like the practice of people being able to have different levels of justice, that is, if you know somebody then certain things won't happen, if you don't, then you follow the course and you go to court.

The case received media publicity which came to the attention of the Chairman. As a consequence, he arranged to obtain a transcript of the trial proceedings to determine what evidence had been given regarding the conduct of Force members in cancelling traffic tickets.

The two-volume transcript was carefully reviewed. It contained a number of statements by RCMP witnesses as to Force practice and policy. The constable who voided the ticket testified:

- "I have voided tickets for reasons from everything that it was a buddy of mine's father-in-law, to drug information or Criminal Code information."
- that, at the time the ticket in question was issued, to his knowledge Force policy in respect of the issuing and voiding of tickets was generally one of open discretion;
- at the time of the trial, the Force policy had changed so that "if anybody wants to void a summary offence ticket there is a sheet that has to be filled out at the office stating the reasons why it has to be voided, and that has to be attached to the police copy of the ticket and kept on file".

The Crown called a Force sergeant to testify on RCMP policy and practice. The trial court judge commented that the sergeant's "answers were long and I got the feeling that he was really trying to skate around some of the issues that were being asked".

The sergeant testified that:

- he did not think the reason for voiding the ticket was a good one;
- a new policy was in place which required monitoring of reasons for voiding tickets by supervisors and the prosecutor;
- the new policy did not change what constituted a proper exercise of discretion; and
- a proper exercise of discretion could be voiding a ticket in exchange for information about a more serious offence. "But there were again those people that were in the criminal element that were picked up for impaired driving, and they wanted to wheel and deal with respect to what they could do for the police department and the community, well then you'd have to take a serious look at that."

In light of the testimony and the comments of the trial judge, the Chairman is concerned whether *today* the conduct of Force members in voiding traffic tickets is always appropriate. While the case dealt with an incident at a particular detachment, the issue it raises is of general application.

What happened at the trial raises a question as to how RCMP members are conducting themselves across the country in dealing with traffic tickets. Although provincial traffic policies, and legislation enforced by the RCMP may vary, standards of conduct should apply to Force members across Canada.

The answer depends on the adequacy of Force policies and procedures, and the manner in which those policies and procedures are applied to particular situations. There obviously must be an exercise in discretion in issuing tickets. But once a ticket has been issued, there should be clear restraints on its cancellation.

A ticket is a simplified means of charging a person with an offence and summoning that person to court to answer the charge. Most, if not all, provinces have legislation authorizing the use of tickets, primarily with respect to traffic offences. The Nova Scotia *Summary Proceedings Act*, for example, provides that "an information may be laid and a summons issued by means of a ticket...". The police officer issuing the ticket delivers the summons portion of the ticket to the person charged with the offence, and such delivery constitutes service of a summons. The information portion of the ticket, containing particulars of the offence is subsequently required to be sworn by the informant before a justice of the peace.

Once this legal process of charging a person has been initiated by the issuing of a ticket, the propriety of the use of police discretion to halt and nullify the process should be carefully considered. The extent of the role of the Crown and the courts, particularly where the information has been sworn, should be taken into account.

Whether the voiding of the tickets of informers is a valid exercise of discretion should also be carefully considered.

The Force appears to have no national policy on this matter. Its Special Operational Procedures relating to Traffic Patrol Techniques is silent on the voiding of traffic tickets. Nor does the subject appear to be governed by a national policy on the general use of police discretion or the withdrawing of charges. The new policy referred to in the trial of the RCMP corporal was, presumably, divisional or detachment policy. It is not clear from the trial transcript.

The development of appropriate policies and procedures, having application across the country, is necessary. This matter should not be left as a local responsibility.

It is essential to the administration of justice that those charged before the law be treated with equal fairness and that there be due legal process. The public is entitled to insist that this be the case. Public respect for law enforcement is lost when cases such as the Halifax prosecution receive publicity, or when it is generally thought in a community that police give out favours by cancelling tickets for friends of the Force.

How should or can the Commission address the matter? The Commission has no jurisdiction to examine Force policies and procedures unless it has a relevant complaint concerning the conduct of an RCMP member before it. Nor has the Commission been given the power to monitor or audit Force operational activities.

The Chairman considers it appropriate for the Commission to be concerned about such matters, and that Parliament intended that to be the case. But, if no complaint from the public has been made, the only means for the Commission to obtain jurisdiction is for the Chairman to initiate a complaint. The complaint must concern the conduct of a member in the performance of a duty or function, and the Chairman must be satisfied that there are reasonable grounds to investigate that conduct.

The Commission is not aware of any complaint from a member of the public regarding the voiding of traffic tickets. If, then, the matter is to be pursued under Part VII of the *RCMP Act*, it will have to be instigated by a complaint by the Chairman.

The Chairman does not consider it appropriate to initiate a complaint in respect of the specific incident that gave rise to the charges against the corporal. That incident occurred more than two years before Part VII came into force. Force policies have changed since that time and the incident itself has been dealt with in the criminal courts.

The Chairman has also considered whether he should initiate a general complaint against unnamed Force members on the basis of the trial testimony. This would create procedural problems as Part VII contemplates identified members who have a role to play in the process, particularly at hearings.

The Chairman has concluded that the best approach is to bring the matter to the attention of all concerned in this annual report, and to recommend that the matter receive the attention of the Force. The Solicitor General may wish to consider giving the Force direction on this issue.

4. Operations Abroad

Aware of the dimensions and impact of international illicit drug traffic, the Government of Canada has asked the RCMP to give priority to the enforcement of drug laws.

To carry out its responsibilities in this area, it is essential for the Force to be involved in investigations outside of Canada.

But such investigations raise a number of questions:

- to what extent does the RCMP have authority to conduct operational activities abroad?
- to the extent that the Force is so authorized, are there guidelines, directives, or procedures which apply to such activities?
- how is the Force accountable for its operational activities, and the conduct of its members, outside Canada?

A specific operation

These questions were brought into focus by the tragic death of RCMP Corporal Derek Flanagan on February 19, 1989, in Chiang Mai, Thailand, and the related news stories following that incident.

According to the news accounts, Corporal Flanagan died of injuries he received when he fell off a truck during a struggle with a drug dealer. At the time, he was apparently acting as an undercover agent in a police operation approved by his superiors.

The news stories were based on interviews with the Thai Police, the RCMP and one Alain Olivier, who was in prison in Bangkok on heroin possession charges. Mr. Olivier appears to be a Canadian citizen.

The Chairman has been troubled over certain allegations and statements, contained in these news stories, regarding the conduct of Force members. These include allegations by Olivier that:

- he was set up over a two-year period by RCMP members, posing as big-time drug dealers, who wanted him to find a heroin seller in Thailand;
- the RCMP paid for his ticket to Thailand, and provided him with accommodation and expense money on his arrival;
- Force members (Olivier still thinking they were drug dealers) threatened to kill him if he was not successful in finding a seller and, on a later occasion, shortly after Corporal Flanagan had received his fatal injuries, threatened him again by putting a gun to his face.

One news story stated that, after Corporal Flanagan fell from the truck, "RCMP officers acting as back-up then rushed to the scene and arrested the Thai gang, holding them until local police arrived".

The news stories contain conflicting statements as to whether the operation was one in which the RCMP was giving assistance to the Thai police, or whether it was the Thai police assisting what was primarily an RCMP operation. An RCMP Inspector in Vancouver, said to have headed the operation, stated that Corporal Flanagan was acting in an "assistance capacity" under the direction of the Thai police. If the

operation was one in which the RCMP was giving investigative assistance to a foreign police force, the operation would have required the approval of the Solicitor General. It is not clear whether such approval was sought or given.

The overall impression left by the news stories is contradictory. On the one hand, there is the impression that the particular operation was part of a larger one that resulted, in Canada, in major seizures of drugs and the arrest of a significant number of traffickers. At the same time, an opposite impression is left that the operation was separate from any major operation, and involved only a relatively small amount of heroin and small-time criminals.

Authority for RCMP operations abroad

It is useful to set out here the authority under which the Force operates outside Canada.

i) *Legislation*
Section 4 of the *RCMP Act* provides that the Force may be employed in such places within or *outside* Canada as the Governor in Council prescribes. An Order in Council (P.C. 1988-1520), dated July 21, 1988, entitled *RCMP Prescribed Places of Employment Order*, prescribes that the Force may be employed outside Canada (i) in all countries and (ii) in all places outside of the territory of any country.

ii) *Ministerial direction*
However, the Commissioner of the Force is, by virtue of section 5 of the *RCMP Act*, under the direction of the Solicitor General. A Ministerial Directive on Police Assistance to Foreign Nations, promulgated in December 1981, outlines how police training, consultative assistance and investigative assistance can be provided to foreign countries by the RCMP. The Directive states that investigative assistance

"involves the temporary relocation of RCMP personnel and/or technical equipment to a foreign country for the purpose of assisting in foreign criminal operations where the request is initiated by the foreign authority".

The Directive further outlines the objectives of police assistance by the RCMP to foreign countries, and the political, financial, liability, and control considerations, including risk factors. It also establishes special procedures for the use of RCMP members, agents or sources, or Crown property outside of Canada, or where foreseeable risk to the safety of such persons or to the reputation of the Government of Canada (and/or the RCMP) is involved. These procedures require that proposals for investigative assistance be reviewed by the Department of External Affairs and approved by the Solicitor General.

"RCMP Legal Services" are required, in every instance, to "employ a formal agreement that specifies the liabilities of the parties thereto". Where an RCMP member is operating abroad, the agreement must encompass a number of specific considerations. These include the allocation of responsibilities, should the Force member be injured or should the member cause injuries to others.

It should be stressed that this Directive only applies to investigations carried out by the RCMP in foreign countries where investigative assistance is being provided for the purpose of assisting in "foreign criminal operations" on the request of the foreign authority.

To whatever extent the Force conducts other investigative work or operations abroad, on its own initiative or otherwise, there is no applicable governing directive. It is understood that the Solicitor General's Secretariat and RCMP

officials have been working on the development of such a directive for over five years.

iii) *RCMP investigation guidelines*
The Force has adopted detailed guidelines for investigations outside Canada. These guidelines apply to all external operational activities, whether to assist foreign police or otherwise.

Members, for example, are forbidden to travel to another country "to conduct investigations/enquiries unless authorized to do so by the appropriate Headquarters director". The foreign country must consent to the activity. Members shall only take part in investigations that are linked to offences against the laws of Canada, and shall not take a firearm outside Canada for operational purposes. Other quite stringent procedures are imposed.

iv) *External Affairs*
There is also a Memorandum of Understanding between External Affairs and the RCMP outlining the arrangements between the two organizations with regard to law enforcement matters having an international dimension. These include proposed visits abroad of RCMP members for operational purposes.

Chairman's concerns and conclusion

The Chairman has concerns about the particular operation that took place in Thailand:

i) Was Alain Olivier improperly "set up" or entrapped by members of the Force?

ii) Was Alain Olivier improperly threatened at any time by members of the Force?

iii) Were members of the Force engaged in an operation in Thailand for which there was

proper authority? Was, for example, the Force acting in an assistance capacity to the Thai police, to which the ministerial directive would apply, or was it essentially an RCMP operation?

iv) Was the operation carried out according to Force policies and procedures?

A broader concern is, of course, whether there are sufficient controls in place for the conduct of RCMP members while on Force operations in foreign countries.

The Chairman has decided to initiate a complaint in this matter on the basis that there are reasonable grounds for doing so, and to commence an investigation of that complaint because he considers it in the public interest. He believes the news accounts raise questions that require answers. He considers he has a responsibility to seek an explanation, and the initiation and investigation of a complaint is the only appropriate means of doing so.

These procedures are being used to enable Force members and the Force itself to answer questions raised in news stories by responsible journalists in responsible newspapers. It may turn out that the journalists' sources provided incorrect information. But the point at this stage is to seek the truth of the matter, as best one can.

Although the Chairman's decision to initiate a complaint and commence an investigation in the public interest was made after the end of the reporting year, reference is made to it here for three reasons. First, the specific incident occurred during the reporting year. Second, the Chairman began his consideration of the matter during that year. And third, the Chairman believes the matter is of significant public importance.

CHAPTER 6 THREE OUTSTANDING ISSUES

This chapter discusses three major issues facing the Commission:

- whether the Commission has jurisdiction over complaints incidents that occurred before September 30, 1988. Is Part VII retrospective in its application?
- how public is the public complaints process? For instance, to what extent does the *Privacy Act* impose constraints on the release of complaints information to the Commission?
- what is the linkage between the disciplinary and public complaints processes established under the *RCMP Act*?

Each of these issues has a significant impact on the application of Part VII and the exercise of its provisions. The importance of the retrospectivity issue will, however, diminish with the passage of time.

1. Old Complaints: Retrospectivity

Is a member of the public entitled to the benefit of the new complaints process when the incident giving rise to the complaint occurred before that process became law? In other words, is the legislation retrospective? The *RCMP Act* does not expressly deal with this question.

While the Commission was getting organized prior to proclamation of Part VII, it received a number of complaints. Some related to incidents that happened long before Parliament adopted the legislation; some were of more recent origin. After Part VII came into force on September 30, 1988, complaints were also received in respect of incidents having occurred before that date. All these complaints were forwarded to the RCMP for attention, and the complainants

were so advised. As well, some complaints were referred to the Commission by complainants who were not satisfied with the disposition by the RCMP, the incident in question having taken place before September 30. In some cases, the RCMP disposition occurred before that date and, in others, afterwards. The complainants were advised that the Commission would not be able to deal with their complaints until the retrospectivity issue was resolved.

At a very early stage, the Commission sought a legal opinion on the retrospectivity issue. Counsel concluded that the legislation was not retrospective in nature, adding the qualification that the matter was not free from doubt.

Legislation is usually prospective in nature. If that is the situation in respect of Part VII, September 30, 1988 would be the cut-off date.

However, there are two exceptions to this general rule which might apply here.

The first exception is when a statute relates to procedure only. It can be argued that the RCMP legislation simply provides a new procedure for dealing with complaints. Conversely, it can be argued that, under this legislation, rights are created (the right to complain) and rights are affected (the rights of Force members).

The second exception is where the intent of the legislation is to protect the public. However, that objective, which surely applies to the public complaints process, must be balanced with the manner in which the legislation affects rights.

In the event that a court ruled in favour of retrospectivity, there would be a further question as to the period covered. It might be limitless, except perhaps for an exclusion of stale-dated matters. Or it might extend into the past only to the date when Royal

Assent was given, on March 26, 1986, or when Part VI was proclaimed in force on December 18, 1986.

Counsel recommended that the Commission have the matter clarified by referring the issue to the Federal Court of Appeal, under section 28 of the *Federal Court Act*.

This recommendation was fully discussed at the first meeting of Commission members, in December 1988, and there was general consensus that this course of action should be followed. It was also generally considered the Commission had no alternative but to act on the basis of Counsel's advice that the legislation was not retrospective. At the same time, it was felt that, in view of the legal doubts about that position, it would not be fair to impose on complainants the burden of challenging that position in the courts. Also, the obtaining of a court ruling at the earliest possible time would avoid the consequences of a possible future pronouncement in favour of retrospectivity. Should that occur, there would be a serious resulting problem with regard to reopening the complaints of all those complainants who had previously been turned away on the ground that the legislation was not retrospective.

Counsel was accordingly instructed to proceed with the section 28 reference. Much preparation was required, as a reference of this kind had to be based on actual complaints rather than speculative questions. A considerable number of situations had to be presented to the court.

In early March, when Counsel was prepared to make the application, the Commission was requested by the Department of Justice, which represents the RCMP in this matter, to proceed under a different provision of the *Federal Court Act*, section 17. This provision enables a reference to be made to a trial judge of the Federal Court of Canada by the Attorney General of Canada with another party. The Com-

mission agreed to this request, which unfortunately came rather late in the day. The drawbacks are that there will be some delay, because the process is different, and that the section 17 reference will result in a ruling of the Federal Court Trial Division rather than one of the Federal Court of Appeal.

The advantage, on the other hand, was that a difficult procedural obstacle would be removed. A reference can be made under section 28 only when the federal agency making it is a decision-making body. An argument could be raised, and the Commission expected it to be raised, that the Commission was not such a body because its findings and recommendations are not binding on the parties appearing before it. (The Commission does not agree with that argument on the ground that it sits as an administrative tribunal with the powers of a board of inquiry, and reaches conclusions.) However, this issue does not arise under section 17 references.

The reference was filed with the Federal Court on May 12, 1989. It is expected to be heard in the early fall.

2. How Public is the Public Complaints Process?

One might expect a public complaints process to be entirely open to public scrutiny. But it is not as simple as that.

The main purpose of the complaints process is to enable individual members of the public to make complaints. Yet the public at large will have a general interest in how the process is working and a specific interest in complaints affecting society as a whole.

The federal *Access to Information Act* and *Privacy Act* give and restrict access to information held by government institutions.

The issue is not whether the Commission should be open, but rather to what degree and in what manner. Timing may be critical. There may be a stage in the process when information should not or cannot be divulged, as when a complaint is under investigation. To release the information to the public at a later stage may be appropriate, for example, at a public hearing or in a report.

Public disclosure issues arise at various stages of the complaints process. For example, can and should the Commission release to the public:

- information about complaints received by the Commission, such as names of the complainant and the Force member, and details about the nature of the complaint?
- information about investigations or reviews being carried out by the Chairman?
- reports of the Chairman or the Commission dealing with specific complaints; reports of the RCMP Commissioner disposing of complaints, and the RCMP Commissioner's response to Commission reports?

A number of factors must be considered:

- the extent to which the Commission process should be regarded as similar to those of the courts and administrative tribunals, where documentation is a matter of public record as a principle of fundamental justice;
- the extent to which information about complaints and their investigation, at least while the investigation is being carried out, should not be public, bearing in mind the experience of such bodies as the Canadian Human Rights Commission and the Commissioner of Official Languages;
- the fact that, subject to certain exceptions, Commission hearings are generally to be held in public;

- the public interest in the fair and proper enforcement of the law;

- the extent to which it may or may not be appropriate to resolve complaints through the less formal resolution process contemplated in Part VII, without the need for public exposure;

- the extent to which the public is entitled to information held by the Commission under the *Access to Information Act*;

- the extent to which the Commission is restricted by the *Privacy Act* from releasing personal information related to complaints; and

- the wishes of the complainant, the Force member whose conduct is in question, and the Force itself.

Some complainants welcome the notion of the complaint being made public. Indeed, they may have gone to the media with their grievances, and the media may have carried their stories. Other complainants, however, may not wish to attract publicity. It may be that a complainant is seeking only a personal apology from the Force member, and does not want to be the cause of public embarrassment to the member or the Force.

Members of the Force whose conduct is being complained about do not, understandably, enjoy being subjected to publicized allegations of misbehaviour. Particularly in smaller communities, such allegations, which may or may not turn out to be justified, can be socially embarrassing for members and their families. Once a complaint is found to be substantiated, either by the Force or the Commission, one might be less sympathetic to the member's desire for privacy. Even then, however, the *Privacy Act* has to be taken into account.

The Commission is dealing with the issue of openness in light of the legal advice it has sought and received. However, most of the above questions have yet to arise in practice, owing to the fact that the Chairman has so far completed no reviews and has issued no reports, and the Commission has held no hearings.

The philosophy of the Commission is: "as open as we can be". Public disclosure, to the extent that it is permissible, should contribute to the health of the process and is essential to public confidence in the system.

3. Public Complaints and Discipline: Linkage

The *RCMP Act* creates what appears to be entirely separate processes for dealing with discipline (Part IV) and public complaints (Part VII).

However, the two processes are related even if the legislation does not identify and deal with that relationship or linkage.

The linkage issues are:

- the extent to which the two processes interrelate in terms of timing;
- the extent to which a member of the public who made a complaint is entitled to know the discipline imposed and, if dissatisfied, is entitled to refer the matter to the Commission for review;
- the extent to which it is appropriate for the Commission or its Chairman to make findings or recommendations on the subject of discipline; and
- the extent to which there is a role for the public complainant in the discipline process.

Timing

The discipline process can be initiated without a member of the public making a complaint. On the other hand, where a complaint is made and found to be justified, one would expect disciplinary measures to follow. However, would it be appropriate for the two processes to proceed concurrently in respect to the same incident?

It may be that, once a public complaint is made under Part VII, the disciplinary process should not be commenced, or if already commenced, should be suspended, until the Part VII process is completed. One can argue that the merits of the complaint should be determined before disciplinary action is taken. As well, a complaint may be made after the disciplinary process has been completed. In such a situation, the RCMP Commissioner might refuse to investigate the complaint on the ground that, having regard to all the circumstances, further investigation was not necessary or reasonably practicable. The complainant would then be entitled to refer such a decision to the Commission for review.

There should be consultation between the Commission and the Force to develop mutually acceptable guidelines with respect to the timing of the application of the two processes.

The complainant and discipline

The RCMP Commissioner is required, when reporting to the complainant, to provide "a summary of any action that has been or will be taken with respect to the disposition of the complaint". He is required to provide that information to the complainant when the investigation is finished. However, disciplinary proceedings may or may not have been commenced at that point. If the disciplinary proceedings have not yet been initiated, all that can be reported to the complainant at this stage is that "appropriate disci-

plinary action will be taken". The Act does not provide for a subsequent report to the complainant.

However, the Act gives the complainant the right to refer the complaint to the Commission for review if he or she is not satisfied with the "disposition of the complaint by the Force". The issue then is whether disposition includes the imposition of discipline.

The Commission sought legal advice on this question and was advised that the complainant was entitled to know the discipline imposed and, if dissatisfied, to refer the matter to the Commission. The Force was informed of this view.

The question, at the moment, is one of statutory interpretation. If the RCMP, or an affected Force member, decided to take the position that the complainant had no right to know, the issue could be determined in the courts at the request of a determined complainant or by means of a reference by the Commission.

In principle, police forces, including the RCMP, prefer to keep the imposition of discipline within their organization an internal matter.

Others support the notion that, if the public is to have confidence in the fairness and seriousness with which police forces take follow-up action on substantiated complaints, there should be disclosure to the complainant and, indeed, to the public as a whole.

Discipline and the Commission

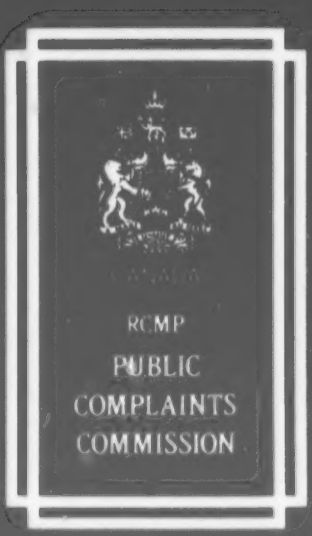
After hearings, reviews and investigations, both the Commission and the Chairman are required to make reports setting out such findings and recommendations as are deemed fit. The Act places no qualifications on the nature of the recommendations.

The extent to which it is appropriate for the Commission or the Chairman to make recommendations in regard to discipline, either in general or specific terms, is an issue that merits careful consideration.

The complainant and the disciplinary process

When a disciplinary matter comes before the External Review Committee, the Committee must give any person an opportunity to participate in the hearing if the Committee is satisfied that he or she has a direct and substantial interest in the matter.

At some time in the future, the External Review Committee may have to address the issue of a complainant's interest in such matters.



THE COMPLAINTS PROCESS

PART IV

CHAPTER 7: WORKING THE PROCESS

The public complaints process, established under Part VII of the *RCMP Act*, comes to life through the use and application of its provisions by the public, the RCMP and its members, and the Public Complaints Commission.

The process is quite complex.

The purpose of this chapter is to set out in some detail how the Commission sees the public complaints process working.

There are eight major steps in the complaints process. They are:

1. making the complaint;
2. disposition of the complaint by the RCMP, through informal resolution or formal investigation;
3. investigation by the Chairman of the Commission or a Commission hearing, whether or not the complaint has been investigated by the RCMP, in instances where the Chairman considers it in the public interest;
4. referral to the Commission by a complainant dissatisfied with the RCMP disposition of the complaint;
5. review by the Chairman;
6. hearing by the Commission;
7. response of the RCMP Commissioner to the findings and recommendations in reports of the Chairman or the Commission; and
8. the final reporting of the Chairman of the Commission.

Most complainants should not have to go beyond steps 1 and 2. Step 3 is optional, and comes into

play only when the Chairman decides there is a matter of public interest at stake. Where a dissatisfied complainant refers the complaint to the Commission at step 4, the matter will not go beyond step 5 if the Chairman is satisfied with the Force's disposition of the complaint.

A description of the eight steps follows.

Step 1: Making the Complaint

There are four questions:

- Who can make a complaint?
- Concerning whom can the complaint be made?
- What can the complaint be about?
- To whom can the complaint be made?

The answers to these questions are provided in section 45.35 of the *RCMP Act*.

Who can make a complaint

Any member of the public is entitled to make a complaint, whether or not that individual was involved in the incident. Such persons may include a relative, a bystander or a person who has simply heard about an incident.

There might be people who wish to make complaints in their official capacities as judges, Members of Parliament or Cabinet Ministers, members of the federal or a provincial public service, or even members of the RCMP. There seems to be no good reason why Part VII should not be available to such people. Ultimately, it should be the merits of the complaint that count. If there were a problem with such people making a complaint, the Chairman could always initiate the complaint if he is satisfied there are reasonable grounds for doing so.

There is special provision for the Chairman to initiate complaints. Such complaints are treated under Part

VII in the same general way as any other, except that the Chairman is required to notify the Solicitor General that he has taken such action.

Other circumstances in which the Chairman might consider initiating a complaint would be where information has been received from an anonymous source, or from a known source who simply wants to draw the Commission's attention to an incident or wishes the Chairman to make the complaint.

On the other hand, the anonymous member of the public may wish to make the complaint personally. While there may be no theoretical impediment to this approach, complaints lodged on an anonymous basis pose obvious practical difficulties. The RCMP investigation cannot include an interview with a complainant whose identity in unknown; the Force cannot resolve the complaint informally with the complainant; and the RCMP Commissioner cannot report to the complainant after completion of an investigation, as the statute requires.

Certainly, it would be dangerous to ignore, as a matter of policy, information from anonymous sources, which may include members of the Force who are "whistleblowing". Important matters could be brought to light in this way.

Concerning whom can the complaint be made?

The complaint can be made about the conduct of any member of the Force or any other person appointed or employed under the authority of the *RCMP Act*.

a) Members of the Force

Members of the Force are defined in section 2 of the Act as officers and members who have been appointed under specified provisions of the Act. These include regular members of the RCMP and special constables appointed to serve at airports and embassies and in certain other special roles, such as in the Force's

Native policing programs. There are also approximately 1,000 civilian members, usually persons with special training or skills.

Not included in the definition of member are:

- supernumerary special constables, appointed under section 7(1)(c), who serve without pay and who are not entitled to any pecuniary privilege or benefits under the *RCMP Act*;
- auxiliary police appointed under provincial legislation (such as the *Police Acts* of British Columbia and New Brunswick), who may be called upon to assist the RCMP in carrying out its responsibilities;
- members of the RCMP Reserve, appointed under section 12 of the *RCMP Act*;
- civilian personnel (generally clerical and secretarial staff), appointed or employed under the *Public Service Employment Act*.

The definition of "member" excludes members who have been dismissed or discharged from the Force. Members who have resigned or retired are considered to have been discharged.

b) "Other person"

Other persons appointed or employed under the authority of the *RCMP Act* are:

- supernumerary special constables;
- members of the RCMP Reserve; and
- temporary civilian staff appointed by the Commissioner under subsection 11(2), but not appointed or employed under the *Public Service Employment Act*.

It is difficult to understand why there should be a distinction between temporary and permanent civilian staff for the making of complaints under Part VII.

Perhaps the distinction was not intended. However, section 11 clearly states that the Commissioner may employ temporary members, on such terms and conditions as are prescribed by Treasury Board. He may, at any time, dismiss or discharge such employees. Section 11 provides that permanent civilian staff shall be "appointed or employed" under the *Public Service Employment Act*.

Auxiliary police, who may be called upon to assist the RCMP are not appointed under the *RCMP Act*, but under provincial legislation. Thus they are not subject to Part VII in respect of their conduct when providing that assistance. Their conduct would be subject to relevant provincial complaints procedures.

Members of the RCMP External Review Committee and the Public Complaints Commission (but not the staff of these two bodies) are also appointed under the *RCMP Act*. But it is hard to believe that the Part VII process was intended to apply to complaints about these persons. This appears to have been a drafting oversight.

c) RCMP as an organization

The legislation does not provide for complaints to be made against the RCMP as a body or organization. The Marin Commission had recommended that the complaint process it proposed should apply to complaints alleging "the failure of the Force itself to meet public expectations". The first two Bills, C-50 and C-19, both included complaints "concerning the activities of the Force in general". The following three Bills, C-69, C-13, and C-65, did not include such complaints.

When Bill C-65 was before the House of Commons, an Opposition member moved that it be amended to enable the process to apply to complaints about the activities of the Force in general, as well as to those concerning the conduct of Force members. The then Solicitor General opposed the motion, stating:

> I do not think it would be desirable for us to set up a permanent body of inquiry into policy matters within the RCMP. I think it is more appropriate that we should have a complaints commission which, in looking at specific complaints of specific behaviour, would have a chance to review that and to look at any related information it felt was appropriate. There is no question that it would have the ability to make findings which reflect on policy, and so it should.
>
> (House of Commons Debates, February 5, 1986, pp. 10495-10498)

Some complaints concerning the conduct of Force members will undoubtedly raise issues concerning Force attitudes, policies, procedures and activities, which the Commission should and will properly address. However, in order to invoke Part VII, there must be a complaint concerning conduct.

d) Informers

A complaint can be made concerning the conduct of an RCMP informer only if it can be shown that the informer was employed under the *RCMP Act*. Most informers are not employed in that sense, although they may receive money for their services. Complaints could, of course, be made against the member of the Force who was the informer's handler.

What can the complaint be about?

Conduct is confined to conduct "in the performance of any duty or function under this Act". These words were added by an amendment to Bill C-65 so as to exclude off-duty conduct.

There may well be complaints made in the future about an RCMP member attempting, while off-duty, to make improper use of his or her influence as a Force member in a personal dispute, or when stopped for a driving offence, for instance. Such

behaviour could breach the Force's Code of Conduct. The extent to which such conduct is subject to Part VII will have to be determined when such a complaint is made.

To whom can the complaint be made?

There are three avenues for making the complaint:

- the Commission;
- any member of the Force, or other person appointed or employed under the authority of the Act;
- the provincial authority, in the province in which the subject matter of the complaint arose, that is responsible for the receipt and investigation of complaints by the public against police.

The statute does not require a complaint to be in writing.

a) The Commission

A complaint can be made to the Commission by telephone, in person, or by mail. The Commission has a toll-free number for the convenience of the public.

b) Any member of the Force

A member of the public can lodge a complaint with the RCMP in several ways. These include writing to the Commissioner at RCMP Headquarters in Ottawa, going in person to a local detachment, telephoning the Division headquarters in a province, speaking to a special constable at an airport, and so on.

c) Provincial authority

The term provincial authority is not defined by the *RCMP Act*. Unless a province or territory had established a special body, such as a public commission, to receive and investigate complaints by the public against the police, the provincial authority would be

the provincial or territorial department or ministry responsible for policing. This is the case in Prince Edward Island and the two territories.

Provincial legislation establishing police commissions or other bodies set up to examine complaints vary greatly. Each provincial statute has to be examined to determine whether the agency is *the* provincial authority "responsible for the receipt and investigation of complaints by the public against police", as prescribed by Part VII of the *RCMP Act*. Some provincial bodies do not have the exclusive authority to receive complaints, but are only one avenue through which complaints can be made. Some have no power to investigate, but only to review or hold hearings. Manitoba and Nova Scotia have, in addition to their provincial police commissions, created special bodies to review complaints. Under Quebec's new legislation, yet to be proclaimed in force, a Commissioner of Police Ethics will receive and examine complaints concerning Quebec police officers.

Discussions are under way with provincial officials in each province to clarify which agency, if any, is the provincial authority for Part VII purposes.

Notification of the RCMP

Lastly, when a complaint is made under Part VII, the RCMP Commissioner must be notified. This statutory requirement is readily understandable where the avenue for making the complaint is the Public Complaints Commission or the provincial authority. But it also applies to complaints made to members of the Force.

Step 2: Disposition of the Complaint by the RCMP

Notification of person whose conduct is in question

On being notified of a complaint made under section 45.35 of the *RCMP Act*, the RCMP Commissioner must notify the member or other person whose conduct is in question. The exception to that require-

ment is where the Commissioner is of the opinion that providing the notice might adversely affect or hinder any investigation that is being or may be carried out in respect of the complaint.

Where Commissioner can refuse to investigate

The RCMP Commissioner can refuse to investigate or stop an investigation if, in his opinion:

- the complaint is one that should be dealt with under a procedure provided in any other Act of Parliament (for example the *Canadian Human Rights Act* and the *Official Languages Act*);
- the complaint is trivial, frivolous, vexatious or made in bad faith; or
- the investigation is not necessary or reasonably practicable.

This power of the RCMP Commissioner does not apply to complaints initiated by the Chairman.

When the RCMP Commissioner exercises this power, he must notify the complainant and the Force member involved of the decision and give his reasons. The complainant must also be advised that, if he or she is not satisfied with the RCMP Commissioner's decision, the complaint may be referred to the Commission for review.

Informal disposition and investigation

Public complaints are dealt with in two stages:

- first, the RCMP Commissioner must consider whether the complaint can be disposed of informally. With the consent of the complainant and the Force member whose conduct is the subject matter of the complaint, the Commissioner may try to resolve the complaint informally. Where a complaint is resolved in this manner, a record of the disposition must be made, the complainant must agree in writing, and the member involved must be informed of the disposition;

- second, if a complaint is not disposed of informally, the complaint must be investigated by the Force in accordance with rules made by the Commissioner. The Commissioner has issued Standing Orders for this purpose.

During an investigation, the Commissioner must, not later than 45 days after being notified of the complaint, provide the complainant and the member involved a written status report of the investigation. After the initial status report, further reports are to be provided on a monthly basis throughout the investigation. An exception is when the Commissioner is of the opinion that providing a status report might adversely affect or hinder any complaint investigation that is being or may be carried out.

When the investigation is completed, the Commissioner must send a final report to the complainant and the member involved. The report must include:

- a summary of the complaint;
- the results of the investigation;
- a summary of any action that has been or will be taken with respect to resolution of the complaint; and
- the right of the complainant to refer the complaint to the Public Complaints Commission for review "if the complainant is not satisfied with the disposition of the complaint by the Force".

Step 3: Public Interest Investigations or Hearings

The Chairman may investigate, or institute a Commission hearing to inquire into a complaint, where he considers it advisable in the public interest to do so. This authority is additional to, and separate from, his authority to initiate complaints.

The Chairman may exercise this power whether or not the complaint has been investigated, reported on or otherwise dealt with by the RCMP under Part VII.

Once the Chairman exercises this power, the RCMP is no longer required to investigate and report, or otherwise deal with the complaint, until the Chairman or the Commission has made its report and the report has been received by the Commissioner.

When the Chairman has completed a public interest investigation, or the Commission a public interest hearing, a report containing findings and recommendations is prepared. This report is then subjected to review by the RCMP Commissioner, after which a finai report is sent by the Chairman to the RCMP Commissioner, the Solicitor General, and the parties.

While the public has an interest in ensuring that every complaint made by a member of the public is appropriately dealt with, Parliament obviously did not intend the Chairman to invoke this public interest provision in every instance. Part VII continues to give the Force the responsibility it has always exercised in investigating complaints against its members. The public interest provision was intended for special circumstances.

The term public interest has, of course, a legal meaning, and we have reviewed the relevant jurisprudence. The most helpful judicial definition was that of Mr. Justice Tallis (now of the Saskatchewan Court of Appeal) in a 1976 case, where he was interpreting the meaning of public interest in subsection 608(3) of the *Criminal Code*. That provision empowered a judge of the court of appeal to order that a prisoner appellant be released, pending the determination of his appeal, if the appellant established that "his detention is not necessary in the public interest".

The judge stated:

> In my opinion, in the determination of what may constitute public interest, Parliament intended to give to the Judge a wide and

> unfettered discretion. I will not attempt to define with particularity what constitutes public interest because this would only restrict the unfettered discretion which Parliament intended to confer. In my view public interest should be given a comprehensive meaning. The circumstances of each case must be examined to determine whether or not the public interest requires the prisoner's detention.
>
> I believe that the effective enforcement and administration of criminal law in this jurisdiction can only be achieved if the Courts, Judges, police officers and law enforcement agencies have and maintain the confidence and respect of the public. Any action which may detrimentally affect that confidence would be contrary to the public interest.

There will be circumstances in which the public has a clear interest over and above that of the individual complainant. A specific complaint about conduct may raise significant questions about Force policies, procedures, attitudes or training that affect many members of the public. An important issue under the *Canadian Charter of Rights and Freedoms* may be contained in a complaint.

The nature of the complaint may be such that it is in the public interest that it be examined independently, regardless of whether the complainant subsequently refers it to the Commission. The complaint may raise an important issue or allege serious misbehaviour warranting independent scrutiny. There may also be occasions where a complainant does not proceed because of intimidation or fear of intimidation, real or imagined. Or the complainant may lose interest.

In situations where the matter of the complaint has become the subject of public controversy, the public interest may best be served by the Chairman instituting a Commission hearing. The RCMP's investiga-

tion might, in some circumstances, not be expected to resolve the matter, and could unnecessarily lengthen the time taken to address the matter satisfactorily from the public's point of view. Sometimes the credibility of Force members and the complainant's witnesses may be the key issue. A Commission hearing, normally held in public, may be the best solution. The facts and the issues would then receive a public airing with the parties being subjected to cross-examination under oath.

The issue of whether a complaint warrants investigation or a hearing in the public interest will require careful consideration in each case. In the end, the use of the public interest provision will be based on the Chairman's judgment. In the first six months of the Commission's operations, the Chairman has invoked the provision on three occasions.

To ensure that the Chairman has the proper opportunity to exercise the public interest provision in appropriate cases, it is essential that the Force make available any information regarding all the complaints it has received directly or from provincial authorities. The only complaints that the Commission would be aware of are those which had been lodged in the first instance with it, or where a dissatisfied complainant has referred the matter to the Commission. For this and other purposes, the Commission has asked the RCMP Commissioner, pursuant to section 45.47 of the *RCMP Act*, for all information contained in the record of complaints received by the Force.

In conferring the general power to investigate, Parliament gave the Chairman no express specific powers to conduct investigations. The Chairman assumes that Parliament intended, at least, that the Force should make available to him, on request, whatever material or files he considered relevant to his investigation, and that the Force, as a matter of policy, would require its members to be available for questioning.

Step 4: Referral By a Dissatisfied Complainant

At the end of step 2, the RCMP Commissioner sends a report to the complainant which must include the results of the Force's investigation and "a summary of any action that has been or will be taken with respect to resolution of the complaint".

Also, if the Commissioner had decided, at an earlier stage in the step 2 proceedings, to direct that no investigation of a complaint be commenced, or that an investigation be terminated, on any of the three grounds specified in subsection (5) of section 45.36, the Commissioner is required to notify the complainant of his decision.

The complainant who is not satisfied with the disposition of the complaint by the Force, or with a direction by the RCMP Commissioner to refuse to investigate, may refer the complaint in writing to the Commission for review.

The conclusions that the Force comes to after investigating complaints are usually expressed in terms of the complaints being "substantiated", "unsubstantiated", or "unfounded". "Unsubstantiated", as opposed to "unfounded", is apparently intended to mean that the complaint has not been or cannot be proven. "Unfounded" presumably means that there was no basis for the complaint. This distinction was recommended by the Marin Commission, and subsequently adopted by the Force.

Complainants who are informed that their complaints are unsubstantiated, and who feel strongly about their versions of the events in question, may wish to bring the matter to the Commission for review.

There may be occasions, however, where a complainant would be satisfied if the Commissioner's report gave an appropriate explanation of the results of the investigation, even when the investigation con-

cluded that the complaint was unfounded or unsubstantiated.

What is meant by disposition of the complaint. Does disposition include the discipline imposed? Is the complainant entitled to know the discipline imposed? If the complainant knew, and was not satisfied with the discipline imposed, is the complainant entitled to refer the complaint to the Commission on that issue? How would the Chairman, for purposes of review, deal with the matter?

The relationship between the discipline process, in Part IV of the Act, and the public complaints process, in Part VII, is discussed in Chapter 6.

Step 5: Review by the Commission Chairman

Once the complainant has referred the complaint to the Commission for review,

- the Chairman provides the RCMP Commissioner with a copy of the complaint;
- the RCMP Commissioner then supplies the Chairman with

  the notice to the complainant (where the Commissioner refused to investigate the complaint), or the report to the complainant (where the Force conducted an investigation), and

  other materials under the control of the Force that are relevant to the complaint.

The Chairman then conducts a review. If he is satisfied with the Force's disposition of the complaint, he prepares a report to that effect and sends it to the Solicitor General, the RCMP Commissioner, the Force member whose conduct has been in question, and the complainant (except when the Chairman initiated the complaint). So far as the statute is concerned, the making of such a report by the Chairman closes

the matter. Part VII provides for no further right of review, or appeal, for the complainant. The review must therefore be thorough and fair.

It will be important to determine why a complainant is dissatisfied with the Force's disposition of the complaint. The adequacy of the explanations contained in the Commissioner's report to the complainant will be critical, particularly from the complainant's perspective. Once the complainant has referred the complaint to the Commission for review, it will be for the Chairman to decide on the adequacy of the Commissioner's report. The Chairman may identify problems with the report that the complainant overlooked or did not articulate.

Where the Chairman is not satisfied with the Force's disposition of the complaint, or considers that further inquiry is warranted, he has a number of options. The Act provides that he may:

i) forward to the Solicitor General and the RCMP Commissioner a report in writing setting out such findings and recommendations as he sees fit;

ii) ask the RCMP Commissioner to conduct a further investigation into the complaint; or

iii) investigate the complaint; or

iv) institute a Commission hearing to inquire into the complaint.

The Act provides for these options in the order set out above, and appears to do so on an alternative basis through the use of the word "or".

The legislative draftsperson has created a maze.

The basic issue is whether the Chairman can exercise more than one option. The legal meaning of the word "or" has been the subject of much interpretation. Sometimes it can be used conjunctively and sometimes disjunctively. Some observations and questions are:

- it seems obvious that it would be possible to invoke option (i) without invoking options (ii) or (iii).
- one might think that, after options (ii) or (iii) have been invoked, either a report must be written under option (i) or a hearing instituted under option (iv). However, the Act provides that where the Chairman exercises his option to investigate (option (iii)), he is required to make a report under a different provision than the one establishing the four options (i.e., section 45.43(3), rather than section 45.42(3)(a));
- what happens where the Chairman has asked the RCMP Commissioner to investigate further? Did Parliament intend that the results of that investigation be reported to the Chairman for the purposes of his review so that he could then prepare a report under option (i)? Or was the request intended to be the basis of a fresh report to the complainant pursuant to section 45.4? Or was it intended that the RCMP Commissioner be free to follow up as he might choose leaving the Commission with no further jurisdiction? The Act is not clear. The first of these choices would make the most sense.

There is an obvious need for clarification of the legislation.

The Chairman's report, where he has exercised option (i) or (iii), is only required to be sent to the Solicitor General and the RCMP Commissioner. But in instances where the Chairman was satisfied with the Force's disposition of the complaint, his report is *also* sent to the complainant and the Force member whose conduct is in question. The reason for this difference appears to be that the former report is interim in nature and is subject to steps 7 and 8 of the complaints process, involving the Commissioner's response and the subsequent final report of the Chairman. This is not the case with a report of the Chairman concluding that he is satisfied with the Force's disposition of the complaint: this is a final report, not subject to steps 7 and 8.

Commission reports after hearings are similarly interim in nature. The reports are only required to be sent to the Solicitor General and the RCMP Commissioner.

Perhaps it was thought that these interim reports ought not to be sent to the complainant and the Force member because the RCMP Commissioner should have the opportunity to decide whether or not he would accept the findings and recommendations of these reports, without the complainant and Force member knowing – perhaps never knowing – what those findings and recommendations were. Under such a procedure, the complainant and Force member might only be informed of the findings and recommendations of the Chairman in his final report. Such an approach would not seem to be consistent with sound administrative law practices, particularly where public hearings have been held. It is difficult to accept the notion that, after a public hearing, the complainant is not entitled to know what the Commission findings were and what it has recommended.

The Act does not state that these interim reports ought not be sent to the complainant and the Force member, and it is the expectation of the Chairman that these reports will be sent to both these parties.

After reviewing a complaint, the Chairman may have to decide whether to write a report, which would conclude the matter so far as Part VII is concerned, or to institute a Commission hearing. What criteria should the Chairman apply to reach such a decision?

Hearings will involve a considerable expense to the public. The Chairman believes that the hearing process should only be instituted when a report by him cannot be effectively used to resolve the complaint. These will include circumstances:

- where it is in the public interest that there should be an airing of the facts or issues involved in a particular complaint;
- where there are credibility issues at stake (over different versions of the incident giving rise to the complaint) that are likely to be appropriately determined only at a hearing, where witnesses must testify under oath and are subject to cross-examination.

There may well be other circumstances. Experience will tell.

Step 6: Hearing by the Commission

On determining that a Commission hearing should be instituted, the Chairman assigns other members of the Commission to conduct the hearing. Having reviewed a complaint, it would be inappropriate for the Chairman to subsequently conduct a hearing.

Where the complaint arises out of provincial, territorial, or municipal contract policing by the RCMP, the Commission member from the contracting province or territory is required by the Act to be assigned, either alone or with other Commission members.

Generally, the Chairman expects to assign three Commission members to conduct hearings. A single Commission member, or a panel of several members, conducting a hearing are deemed to be the Commission.

As a matter of policy, Commission hearings should be held in the locality where the incident giving rise to the complaint occurred. The Act states that the Commission shall sit at such place in Canada as may be fixed by the Commission, having regard to the convenience of the parties.

Hearings are required to be in public, except where the Commission is of the opinion that information

falling within any of three categories would likely be disclosed during the hearings. The three categories are:

- information the disclosure of which could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities;
- information the disclosure of which could reasonably be expected to be injurious to law enforcement;
- information respecting a person's financial or personal affairs where that person's interest outweighs the public's interest in the information.

At the end of the hearing, the Commission prepares a report, setting out such findings and recommendations with respect to the complaint as it sees fit.

The Commission conducting a hearing has most of the powers granted to boards of inquiry established under Part I of the *RCMP Act*. This means that it will have the power, in relation to the matter before it:

- to summon any person before the commission and to require that person to give oral or written evidence on oath and to produce such documents and things under that person's control as the Commission deems requisite to the full investigation and consideration of that matter;
- to administer oaths;
- to receive and accept on oath or by affidavit such evidence and other information as the Commission sees fit, whether or not such evidence or information is or would be admissible in a court of law.

Certain restrictions on the admissibility of evidence are imposed by the legislation.

The Act provides that all proceedings before the Commission shall be dealt with as "informally and expeditiously as the circumstances and considerations of fairness permit".

The parties at a hearing are defined in the Act as:

- the complainant,
- the Force member (or other person) whose conduct is the subject-matter of the complaint,
- the officer designated by the Commissioner in respect of the Force member, referred to in the Act as the "appropriate officer".

The Commissioner's Standing Orders (Public Complaints) state that, in the rules established by the Standing Orders, appropriate officer means, in respect of a member, the commanding officer of the division where the incident complained of occurred. The term commanding officer is defined as including "the Director of Administrative Services".

While the role of the appropriate officer at the hearing is not defined in either the Act or the Standing Orders, it is undoubtedly that of representing the interests of the Force, rather than those of the Force member whose conduct is in question. The Act provides for the appropriate officer to be represented or assisted at the hearing by any other member.

The parties referred to above *and* any other person who satisfies the Commission that he or she has a "substantial and direct interest" in the complaint must, at the hearing, be afforded a full and ample opportunity, in person or by counsel:

- to present evidence,
- to cross-examine witnesses, and
- to make representations.

The Commission is concerned that complainants appearing at hearings may not be represented by counsel. Many may not be able to afford counsel. On

the other hand, the appropriate officer, representing the RCMP's interests, and the Force member can be expected to have lawyers appearing on their behalf. In addition, the Commission will have an *ad hoc* counsel present at hearings to ensure that all available evidence that should be presented to the Commission is brought forward. But such counsel cannot be an advocate for the complainant.

A complainant without counsel, who is subjected to cross-examination by counsel for the other parties and who does not possess the skills to cross-examine the Force member and other witnesses, may well come away with the impression that the proceedings were unfair. While the Act provides that the Commission must permit any person who gives evidence at a hearing to be represented by counsel, it does not expressly provide for some form of legal aid for complainants. The Commission has recognized a need for legal aid in appropriate cases and is taking steps to determine avenues by which that kind of assistance may be provided.

Provision is made in Part VII for the payment of travel and living expenses incurred by the complainant, the Force member whose conduct is in question, or counsel when appearing at hearings held in a locality that is not their ordinary place of residence.

In addition to the statutory rules, the Commission may make rules of practice and procedure for hearings. Draft rules have been prepared.

Upon completion of its report, the Commission is required to send it to the Solicitor General and the RCMP Commissioner, but there is no requirement that it should be sent to the parties. The marginal note in the statute, with respect to the provision imposing this requirement, states "Interim report". What was said in regard to the Chairman's report in step 5 applies equally here.

The Commission plans to send copies of the report to the complainant, the Force member or other person whose conduct was in question, and to any person that the Commission permitted to appear as an intervenor.

Step 7: Response of the RCMP Commissioner

The RCMP Commissioner must be sent reports of:

- the Chairman

  (a) made after conducting a review of a complaint, where the Chairman concluded that he was not satisfied with the Force's disposition of the complaint; or

  (b) on completion of a Chairman's investigation commenced by the Chairman either

    i) where the investigation was considered advisable in the public interest, or

    ii) where, after conducting a review, further investigation by the Chairman was considered warranted;

- the Commission, on completion of a hearing by the Commission.

After receiving a report of this kind, the RCMP Commissioner is required to review the complaint in light of findings and recommendations set out in the report. He must then notify both the Solicitor General and the Chairman in writing:

- of any further action that has been or will be taken with respect to the complaint, and

- where the RCMP Commissioner decides not to act on any findings or recommendations set out in the report, his reasons for not so acting.

Step 7 does not apply to the report of the Chairman where he was satisfied with the Force's disposition of the complaint.

Step 8: Final Report of Chairman

The Chairman must consider the RCMP Commissioner's notice under step 7 and, after doing so, prepare a final report setting out such findings and recommendations as he sees fit.
The statute provides no procedure to be followed in the Chairman's consideration of the RCMP Commissioner's notice. Again, the Chairman will attempt to apply sound administrative law practices and has sought legal advice in this matter. There are some difficult questions here. For example, what matters can the Chairman appropriately take into account in considering the RCMP Commissioner's notice? Are the parties entitled to make presentations to the Chairman, commenting on the contents of the Commissioner's notice?

Is the Chairman free to reach entirely different conclusions from those in the Commission report made under Step 6, or is he subject to any constraints in this respect? Suppose, for example, that the RCMP Commissioner has decided to accept and act on the recommendations of an interim Commission hearing report, and the Chairman makes findings and recommendations in his final report which are significantly different. Such a situation appears to be possible.

The Chairman's final report is to be sent to the Solicitor General, the RCMP Commissioner, and the parties that participated in the Commission hearing.

Beyond the Final Report

The Act provides no further procedures for resolving complaints. If the RCMP Commissioner has accepted and acted on the findings and recommendations of the interim and final reports (assuming these two reports not to be in conflict), that should bring the matter to a conclusion. There will be occasions, of course, when a disappointed party will seek further recourse through judicial review or other litigation in

the courts, through the media, by having the matter raised in Parliament, or otherwise bringing it to the attention of the Solicitor General.

If there are cases where the RCMP Commissioner has refused to accept and act on Commission findings and recommendations in an interim report, and the Chairman, in his final report, agrees with the interim report, the Chairman would no doubt recommend that the Commissioner reconsider his position. He could, of course, recommend that the Solicitor General direct the RCMP Commissioner to act on the findings and recommendations of the final report. In any event, where there are differences in position between the Commission and the RCMP Commissioner – and it is hoped these will be few – those differences would attract the interest of the Solicitor General in terms of his accountability to Parliament. Those differences would, of course, be brought to the attention of Parliament in the Chairman's annual report.

A FINAL WORD

During the past year the challenge for both the Commission and the RCMP has been to organize themselves to carry out the mandate Parliament has provided.

The Commission has done its best to bring life to Parts VI and VII:

- by responding to those members of the public who have been the first to bring their complaints to us and have thus generated the Commission's workload during its first six months of operations;
- by examining issues, and exploring the meaning of Parts VI and VII, to arrive at a general understanding of how the public complaints process should work;
- by holding consultations and discussions with the RCMP and its members so that the Force and the Commission can co-ordinate their respective responsibilities;
- by engaging a trained staff sensitive to the Commission's special responsibilities and committed to principles of fairness and impartiality.

In this report, the Chairman has drawn attention to the RCMP's delays in providing information and the quality of that information, and has called for greater direction and supervision of its members in the handling of complaints. He has also raised a number of other concerns and issues that need to be addressed. The purpose of the report is to inform Parliament as to how the process is working, and to provide a stimulus for improvement.

The Force is a large organization with large responsibilities in a large country. Understandably, it has developed a complex bureaucratic structure centralized to a degree at RCMP national headquarters in Ottawa, but heavily decentralized, on the other hand,

in operational divisions across Canada. The divisions in turn have their sub-divisions and detachments.

It should not be surprising, therefore, that the introduction of the new public complaints process has not been free of some "start-up" difficulties. On the whole, however, the Chairman believes substantial progress has been made.

The Chairman would like to emphasize that the RCMP Commissioner and the Force generally are approaching the administration of Part VII with good will, and have displayed a willingness to co-ordinate their responsibilities with the Commission's.

The Commission and the Force will not always be in agreement. There will be tensions between the two bodies. That is the nature of external review and inquiry. What is important is that continuous effort be made to keep the tension healthy and to work at reducing unnecessary disagreement.

The system is beginning to work. The Part VII machinery has come into play, but some parts of it have yet to function. As yet, no Chairman's reviews have been completed, or any hearings held, but investigations in the public interest have been launched. A year from now, the Chairman should be able to give an account of the machinery in full production.

In 1989, the Commission's major priority, over and above managing its developing workload, is tackling the problems of informing members of the public about its role and mandate, and providing them with easy access to its services.

Awareness and accessibility will be the objectives. Members of the public are entitled to know about their rights and to exercise them readily when they wish to do so.

Fairness will be the watchword of the Commission.

RAPPORT ANNUEL 1988 - 1989

CANADA

COMMISSION
DES PLAINTES
DU PUBLIC
CONTRE LA GRC

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Services Canada 1989
N° de cat. JS77-1/1989
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RAPPORT ANNUEL 1988-89

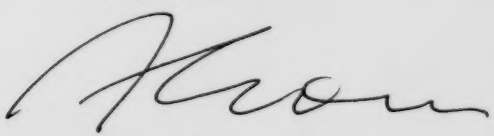
L'honorable Pierre Blais, C.P., député
Solliciteur général du Canada
Chambre des communes
Ottawa (Ontario)
K1A 0A6

Monsieur le Ministre,

Conformément à l'article 45.34 de la *Loi sur la Gendarmerie royale du Canada*, j'ai l'honneur de vous soumettre le rapport annuel, 1988-1989, de la Commission des plaintes du public contre la Gendarmerie royale du Canada, pour dépôt devant les deux Chambres du Parlement.

Veuillez agréer, Monsieur le Ministre, l'expression de ma plus haute considération.

Le président,



Richard Gosse

Le 20 juin 1989

Tout membre du public

qui a un sujet de plainte concernant la conduite,

dans l'exercice de fonctions prévues à la présente loi, d'un membre ou de toute autre personne nommée ou employée sous le régime de celle-ci

peut,

qu'il en ait ou non subi un préjudice,

déposer une plainte auprès soit :

a) de la Commission;

b) d'un membre ou de toute autre personne nommée ou employée sous le régime de la présente loi;

c) de l'autorité provinciale dans la province d'origine du sujet de plainte, compétente pour recevoir des plaintes et faire enquête.

Paragraphe 45.35(1) de la *Loi sur la Gendarmerie royale du Canada* qui est entrée en vigueur le 30 septembre 1988.

MEMBRES DE LA COMMISSION

À Temps Plein

RICHARD GOSSE, C.R.
Président

De 1977 à 1985, M. Gosse a occupé les fonctions de Sous-procureur général de la Saskatchewan puis, il a été inspecteur général du Service canadien du renseignement de sécurité de 1985 à 1988, date de sa nomination au poste de président de la Commission. Ancien professeur de droit à Queen's University et à l'Université de la Colombie-Britannique, il a occupé le poste d'avocat-conseil auprès de la Commission de réforme du droit de l'Ontario et fut le premier membre à temps plein de la Commission de réforme du droit de la Colombie-Britannique. Membre des barreaux de l'Ontario, de la Saskatchewan et de la Colombie-Britannique, il a exercé le droit en Colombie-Britannique pendant plusieur années.

FERNAND SIMARD
Vice-président

M. Simard est membre du barreau du Québec depuis 1961. Spécialiste du contentieux et de l'administration, il exerce à Montréal depuis de nombreuses années. Il a été président du tribunal disciplinaire des pénitenciers fédéraux à sécurité maximum et moyenne.

Membres à Temps Partiel

Colombie-Britannique

L.ALLAN WILLIAMS, C.R.

M. Williams a été procureur général de la Colombie-Britannique et ministre du Travail dans le gouvernement de cette province. À l'heure actuelle, il occupe le poste d'avocat principal dans le cabinet Davis and Company à Vancouver.

Suppléant **LYMAN R. ROBINSON, C.R.**

Le professeur Robinson enseigne à la Faculté de droit de l'Université de Victoria dont il a été doyen. Il est membre de la Commission de réforme du droit de la Colombie-Britannique, membre du tribunal de la Commission des droits de la personne et membre de la Commission de police de Saanich.

Alberta

LE JUGE SIDNEY V. LEGG

Le juge Legg est juge surnuméraire de la Cour du Banc de la Reine de l'Alberta et fait partie de la magistrature de cette province depuis 1960. Il a été président du Law Enforcement Review Board de l'Alberta depuis la création de cet organisme en 1974. Le juge Legg est un ancien président de la Fondation canadienne de la fibrose cystique.

Saskatchewan

DONALD K. MacPHERSON, C.R.

M. MacPherson est associé principal dans le cabinet d'avocats MacPherson, Leslie et Tyerman de Régina et président à temps partiel de la Commission de police de la Saskatchewan. Il est ancien président du barreau de la Saskatchewan et de l'Association canadienne pour les déficients mentaux.

Suppléant **DAVE ZACHARIAS**

M. Zacharias est agriculteur et homme d'affaires à Swift Current. Il participe aux activités de divers organismes communautaires de Swift Current et a été président de plusieurs d'entre eux.

Manitoba

GRAEME THOMSON HAIG, M.C., C.D. C.R.

M. Haig est associé principal dans le cabinet d'avocats D'Arcy and Deacon de Winnipeg. Ancien président du barreau du Manitoba, il a dirigé plusieurs organisations communautaires de cette province. M. Haig a été nommé

Commissaire spécial chargé de faire enquête sur les loteries et le jeu au Manitoba.

Suppléante **S. JANE EVANS**

M^me^ Evans est associée dans le cabinet d'avocats Aikins, MacAulay and Thorvaldson de Winnipeg. Elle participe activement à l'action de nombreuses organisations de service communautaire et préside actuellement les Family Services of Winnipeg Inc.

Nouveau-Brunswick

JUDITH MacPHERSON

M^me^ MacPherson est avocate à Moncton où elle a son propre cabinet. Elle est présidente du barreau du Nouveau-Brunswick. Depuis 1980, elle est arbitre auprès de la Commission des relations du travail de la Fonction publique.

Suppléante **MARIE ODETTE SNOW**

Le professeur Snow enseigne à la Faculté de droit de l'Université de Moncton et appartient au barreau du Nouveau-Brunswick.

Nouvelle-Écosse

BLAIR HARRIS MITCHELL

M. Mitchell est associé dans le cabinet d'avocats Green, Veniot and Parish d'Halifax. Il est membre du conseil d'administration de l'Association des libertés civiles de la Nouvelle-Écosse et du Bureau des gouverneurs du University College à Cape Breton.

Suppléant **EARL HOLT SMITH**

M. Smith, qui vit à River John, a récemment pris sa retraite après 20 années de travail en tant qu'agent de probation pour les adultes auprès du ministère du Procureur général de la Nouvelle-Écosse. Il est un ancien agent de police municipal.

Île-du-Prince-Édouard

GRAHAM W. STEWART

M. Stewart est associé dans le cabinet d'avocats Campbell, Stewart à Charlottetown. Il a été Sous-procureur général de l'Île-du-Prince-Édouard et il participe activement à de nombreuses organisations communautaires.

Suppléant **W. ALLISON MacRAE**

M. MacRae est un homme d'affaires de Charlottetown qui, depuis de nombreuses années, est très actif au sein de la communauté. Il a été président de la Commission des sports et des courses de l'Île-du-Prince-Édouard.

Terre-Neuve

ROBERT BARRY LEARMONTH

M. Learmonth est associé dans le cabinet d'avocats Learmonth, Dunn de St. John's et membre du corps des doyens de la Newfoundland Law Society. C'est un ancien procureur de la Couronne et il est à l'heure actuelle président du Labour Standards Tribunal de Terre-Neuve.

Suppléante **MARIA G. HENHEFFER**

M^me^ Henheffer est membre du cabinet d'avocats Martin, Whalen de St. John's et s'occupe surtout des cas en litige.

Territoires du Yukon

ROSEMARY B. TREHEARNE

M^me^ Trehearne, qui vit à Whitehorse, est, depuis 1985, directrice du Programme d'assistance parajudiciaire aux autochtones. Elle est présidente de l'Association des femmes indiennes du Yukon, membre du Conseil judiciaire du Yukon et arbitre auprès de la Commission des droits de la personne du Yukon.

Suppléant **JOHN WRIGHT**

M. Wright est président à temps partiel de la Commission des accidents du travail du Yukon. Ancien major des Forces armées canadiennes, spécialiste de la police militaire, il a participé à plusieurs programmes communautaires en matière de justice pénale.

Territoires du Nord-Ouest

JOHN U. BAYLY, C.R.

M. Bayly exerce depuis 1974 la profession d'avocat à Yellowknife où il a actuellement son propre cabinet. Il a manifesté un vif intérêt pour les droits des peuples autochtones et a représenté plusieurs organisations autochtones. M. Bayly a été le premier directeur exécutif de la Commission des services juridiques des Territoires du Nord-Ouest. En 1984-1985, il était président du Groupe de travail du Gouvernement territorial relativement aux voies de fait entre conjoints.

Suppléant **LAZARUS ARREAK**

M. Arreak a travaillé comme éducateur des adultes et représentant de l'aide juridique dans diverses communautés de l'île de Baffin. Il termine actuellement un programme de trois ans en études administratives portant sur la gestion du secteur public au Arctic College à Iqaluit.

Membres à titre particulier

GISÈLE CÔTÉ-HARPER, C.R.

Le professeur Côté-Harper enseigne à la Faculté de droit de l'Université Laval et est membre du barreau du Québec. Elle est connue pour ses travaux de recherche et ses ouvrages dans les domaines des droits de la personne et du droit pénal; elle est vice-présidente de l'Association canadienne des libertés civiles et habite à Québec.

GINA SACCOCCIO BRANNAN

M^me^ Brannan exerce le droit, à Toronto, au sein du cabinet Lyons, Goodman et a occupé, auprès du gouverne-

ment de l'Ontario, les fonctions de conseillère principale en matière de politiques.

* * *

La *Loi sur la GRC* stipule que la Commission doit comprendre

- un président et un vice-président;
- un représentant de chaque province ayant conclu un contrat relativement aux services policiers fournis par la GRC (toutes les provinces, sauf l'Ontario et le Québec);
- trois autres membres au maximum membres à titre particulier.

En vertu de la *Loi d'interprétation*, le mot « province » désigne également ici le Yukon et les Territoires du Nord-Ouest. Ces deux juridictions ont signé un contrat relativement aux services policiers fournis par la GRC à l'intérieur de leurs frontières, et elles doivent donc être représentées par un membre au sein de la Commission.

La Loi prévoit par ailleurs la nomination de membres suppléants pour remplacer n'importe quel membre de la Commission, à l'exception du Président. Tout suppléant peut, dans le cadre d'une audience, remplacer un membre de la Commission « en cas d'absence », « d'empêchement » ou d' « inéligibilité » de ce dernier.

Le Président est membre à temps plein, tandis que les autres membres peuvent être nommés à temps plein ou à temps partiel. Le seul autre membre à temps plein est le vice-président.

Les membres de la Commission sont nommés par décret du gouverneur en conseil pour un mandat de cinq ans au maximum. Tous les membres ayant été nommés jusqu'ici l'ont été pour cinq ans. Les membres de la GRC ne peuvent faire partie de la Commission.

Le ministre chargé des services policiers dans chaque juridiction contractante (province ou territoire) doit être consulté avant que le représentant de ladite juridiction auprès de la Commission soit désigné.

Lorsque la Commission tient une audience relativement à une plainte au sujet d'une action commise dans le cadre des services contractuels fournis par la GRC, le représentant de la province ou du territoire en cause auprès de la Commission doit être chargé, soit seul, soit avec d'autres membres de cette dernière, de tenir l'audience.

C'est le Président qui décide quels membres de la Commission tiendront les audiences. Aux fins de celles-ci, un seul membre, ou un groupe de membres, constitue la Commission.

LA COMMISSION

Administration Centrale

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Ottawa

L'adresse postale est la suivante :

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REMARQUES PRÉLIMINAIRES

La Gendarmerie royale du Canada, le plus important et le mieux connu des corps policiers du Canada, est maintenant régi par une procédure légale relative aux plaintes du public. L'exécution d'examens et d'enquêtes externes par un organisme impartial et indépendant, à savoir la Commission des plaintes du public, constitue un élément essentiel de cette procédure.

La GRC continuera de faire enquête sur les plaintes déposées contre ses membres. Toutefois, le Parlement a mis en place un organisme indépendant, soit la Commission, pour parer aux difficultés réelles ou potentielles que pourrait susciter la conduite d'enquêtes par la GRC elle-même sur des accusations de mauvaise conduite portées contre ses membres. Un mécanisme externe d'examen et d'enquête devrait garantir que les plaintes formulées à cet égard seront traitées avec équité et objectivité.

Le Président de la Commission a été nommé le 1er février 1988, et la Commission a commencé ses opérations le 30 septembre de la même année.

Le présent document est le premier rapport du premier président de la Commission. Il porte sur l'exercice financier s'étant terminé le 31 mars 1989. À l'occasion, le rapport mentionne des événements survenus après cette date, lorsqu'ils se rapportent à des faits déjà en cours avant la fin de l'exercice financier.

La Partie I explique le mandat de la Commission, et les mesures prises pour organiser cette dernière.

La Partie II traite des plaintes. Le chapitre 3 contient des prévisions sur la charge de travail de la Commission, tandis que le chapitre 4 fournit une analyse et des observations sur les plaintes ayant été portées à l'attention de la Commission jusqu'ici. Le

chapitre 5 examine certaines préoccupations particulières relatives à la procédure pour traiter les plaintes.

La Partie III comprend des chapitres traitant de trois questions en cours de règlement : la rétroactivité de la procédure des plaintes; à quel point la procédure des plaintes du public peut-elle être publique; et le lien entre les plaintes du public et la discipline.

La Partie IV examine les défis auxquels la Commission fera face dans l'avenir. Les détails fournis dans ces chapitres devraient intéresser les lecteurs désireux d'en apprendre davantage sur la nouvelle procédure et sur son fonctionnement.

Le paragraphe 45.34 de la *Loi sur la GRC* exige du Président qu'il soumette au Solliciteur général du Canada, dans les trois mois suivant la fin de chaque exercice financier, un rapport sur les activités menées par la Commission au cours de l'année en question. Le Ministre est tenu de faire déposer un exemplaire du rapport devant chacune des chambres du Parlement dans les quinze premiers jours de séance suivant la réception du rapport de la part du Président.

Le Président assume la pleine responsabilité du contenu du rapport. Il tient à remercier le personnel de la Commission pour l'appui considérable qu'il lui a fourni; sans cette aide, la rédaction du rapport n'aurait pas eu lieu.

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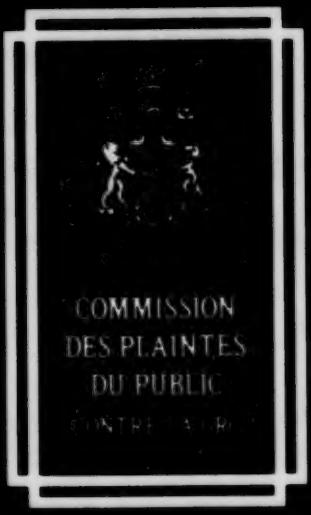


MANDAT ET ORGANISATION

PARTIE I

CHAPITRE 1 LE MANDAT DE LA COMMISSION

Le contexte législatif

Au cours des douze ans qui ont précédé l'adoption de la procédure des plaintes du public par le Parlement en 1986, divers faits importants ont influé sur la rédaction de la loi fédérale.

En 1974, le gouvernement fédéral a créé une commission chargée d'enquêter sur les procédures appliquées par la GRC relativement à la discipline et aux griefs, ainsi qu'aux plaintes du public. Cette Commission, appelée communément Commission Marin, a déposé son rapport en 1976. Elle a recommandé que des procédures distinctes servent à étudier les questions de discipline et les plaintes du public, et elle a ainsi préconisé qu'un organisme indépendant (un ombudsman de la police fédérale) s'occupe de l'examen externe et constitue un élément essentiel commun aux deux procédures susmentionnées. L'ombudsman relèverait directement du Parlement. Selon la Commission Marin, la police devait en général continuer d'assumer la responsabilité des enquêtes sur les plaintes du public, mais l'ombudsman de la police fédérale devait avoir le pouvoir de mener des enquêtes lui aussi et de constituer des tribunaux pour tenir des audiences publiques sur le bien-fondé des plaintes.

En 1977, une commission royale, connue sous l'appellation de Commission McDonald, a été chargée d'enquêter sur certaines activités de la GRC, en particulier sur celles des Services de sécurité. La Commission, qui a déposé ses rapports en 1981, recommandait d'établir un Bureau de l'Inspecteur des pratiques de la police. L'Inspecteur devait faire partie du ministère du Solliciteur général et relever directement de ce dernier auquel il devait par ailleurs faire rapport régulièrement sur les résultats des enquêtes et, annuellement, sur les activités de son Bureau. Le

Solliciteur général devait présenter le rapport annuel au Parlement. La Commission McDonald croyait que la police devait assumer la responsabilité générale des enquêtes sur les plaintes du public, mais aussi que l'Inspecteur devait avoir le pouvoir de mener lui-même des enquêtes dans certaines circonstances.

Toutes les provinces, sauf l'Ontario et le Québec, ont conclu des accords pour obtenir de la GRC des services de police dans les limites de leur territoire. Pendant les années 1970 et 1980, un certain nombre de ces provinces ont promulgué des lois pour autoriser des commissions de police ou des organismes semblables à s'occuper des plaintes du public qui concernaient la conduite des membres de la GRC s'acquittant de leurs responsabilités d'ordre policier aux niveaux provincial et municipal. En 1981, cependant, la Cour suprême du Canada, dans l'affaire du *Procureur général de l'Alberta c. Putnam*, a déclaré inconstitutionnelle toute loi provinciale autorisant une commission provinciale à enquêter sur la conduite des membres de la GRC et, dans certains cas, à imposer des sanctions disciplinaires.

Malgré la décision de la Cour suprême et l'adoption d'une procédure des plaintes du public par le Parlement en 1986, il existe encore dans certaines provinces des lois sur les plaintes contre la GRC. En fait, une province a promulgué en 1988 une loi semblable établissant une procédure qui ne cadre carrément pas avec la Partie VII de la *Loi sur la GRC*. Le fait qu'il y ait, dans les lois fédérales et provinciales, des dispositions contradictoires relatives aux plaintes du public plonge celui-ci dans la confusion, ne favorise en rien l'administration de la justice, et place la GRC dans une position fâcheuse. Nous avons porté ce problème à l'attention du Sous-solliciteur général fédéral, du sous-ministre fédéral de la Justice, et des autorités provinciales compétentes.

Dans les années qui ont suivi la diffusion du rapport Marin en 1976, des projets de loi fédéraux et la question constitutionnelle de la juridiction ont fait l'objet de discussions à des réunions auxquelles assistaient des ministres fédéraux et provinciaux de la Justice et d'autres fonctionnaires des mêmes paliers de gouvernement. L'apport des provinces, notamment des provinces contractantes, a entraîné la modification des projets susmentionnés.

Entre 1978 et 1985, le gouvernement a introduit en chambre une série de projets de loi : les projets de loi C-50 et C-19 en 1978, C-69 en 1981, C-13 en 1984, et enfin, le projet de loi C-65, qui a été présenté en 1985 et adopté en 1986. Le projet de loi C-65 modifiait la *Loi sur la GRC*, en y ajoutant entre autres les Parties VI et VII, lesquelles établissaient respectivement la Commission des plaintes du public et la procédure des plaintes du public.

La Commission a examiné en profondeur les rapports, les textes législatifs et la jurisprudence susmentionnés afin d'arriver à bien comprendre le contexte législatif des Parties VI et VII. Dans un avenir rapproché, elle compte publier un document de travail sur les résultats de son analyse. Il est à espérer que cela sera utile à ceux et celles s'intéressant plus particulièrement à la nouvelle procédure des plaintes.

Le Parlement prend la parole

Le Parlement a créé cette nouvelle procédure pour garantir que la GRC et ses membres seraient comptables de leur conduite devant le public en amendant la *Loi sur la GRC*, le 26 mars, 1986.

Au centre du nouveau dispositif se trouve la Commission des plaintes du public.

La raison d'être de la Commission est de veiller à ce que :

- l'on donne suite de manière équitable et efficace aux plaintes du public; et

- que l'on tienne compte, dans l'examen des plaintes, du fait que l'intérêt public exige une application équitable et objective de la loi.

Les nouvelles dispositions ont été adoptées pour protéger le public contre la mauvaise conduite de la police et pour prévoir des mesures rectificatrices le cas échéant; la loi contient également des dispositions pour garantir aux membres de la Gendarmerie un traitement équitable chaque fois qu'ils font l'objet de plaintes.

Le mandat confié à la Commission est énoncé à la Partie VII de la *Loi sur la GRC*, qui a été promulguée le 30 septembre 1988. Le législateur a attribué certaines responsabilités à la Commission en tant qu'organisme et tribunal, et certaines autres au Président. La direction de la Commission est confiée au Président, et c'est lui qui « assure la direction et contrôle la gestion de son personnel » .

Aux termes de la Partie VII :

- la Commission reçoit les plaintes du public;
- le Président peut lui-même porter plainte s'il est fondé à croire qu'il convient de le faire;
- la Commission doit aviser la GRC de toute plainte déposée devant elle afin que la GRC puisse faire enquête et en arriver à un règlement;
- s'il juge que l'intérêt public l'exige, le Président peut tenir une enquête ou convoquer une audience pour enquêter sur une plainte, que celle-ci ait ou non déjà fait l'objet d'une enquête de la part de la GRC;
- si le plaignant n'est pas satisfait de la manière dont la Gendarmerie a réglé sa plainte, le Président procède à l'examen de celle-ci;
- si, après examen, le Président ne s'estime pas satisfait de la manière dont la Gendarmerie a réglé la plainte, il peut décider de convoquer une audience;

- dans leurs rapports respectifs, le Président et la Commission formulent des conclusions et des recommandations.

En même temps qu'il a instauré la nouvelle procédure des plaintes, le législateur a aussi modifié la *Loi de la GRC* à deux autres égards importants :

- il a prévu, dans la Partie II de la Loi, la mise en place du Comité d'examen externe afin d'examiner et d'entendre les appels et les griefs déposés par des membres de la Gendarmerie (ce qu'on pourrait appeler des plaintes internes), relativement aux mesures disciplinaires, aux renvois, à la rétrogradation et à la procédure de règlement des griefs; et
- il a prévu, dans les Parties III, IV et V, une procédure de règlement des griefs des membres de la Gendarmerie, ainsi qu'une procédure relative aux renvois et à la rétrogradation, et il a modifié en profondeur la procédure disciplinaire.

Le Comité d'examen externe et la Commission des plaintes du public sont deux organismes distincts et indépendants. Ils sont tous les deux extérieurs à la GRC. Le Comité d'examen externe se penche sur les questions internes propres à la Gendarmerie, et la Commission s'occupe des plaintes du public.

La Loi prévoit des procédures distinctes et séparées pour l'imposition de mesures disciplinaires à des membres de la GRC et pour le traitement des plaintes du public, mais il existe des liens entre ces deux aspects (voir le chapitre 6).

Un mot sur la Gendarmerie

La GRC occupe une place spéciale au sein de la société canadienne. C'est, en effet, un symbole national. Ses effectifs s'élèvent à près de 18 000 membres, c'est-à-dire trois fois plus que le service de police venant au deuxième rang au Canada. Sa présence est connue et sentie depuis les confins de Terre-

Neuve jusqu'à la côte ouest de l'île Vancouver, et depuis les communautés inuit du Grand Nord jusqu'aux métropoles du Sud.

Mais la GRC ne fait pas toujours sentir sa présence de la même manière. Selon la partie du pays, elle a des contacts différents avec le public et elle entretient avec lui des relations plus ou moins particulières.

Non seulement la Gendarmerie est notre police fédérale, mais elle constitue aussi la police provinciale dans toutes les provinces à l'exception de l'Ontario et du Québec. Elle assure les services policiers au Yukon et aux Territoires du Nord-Ouest. Dans le rôle qu'elle assume aux niveaux provincial et territorial, elle assure les services policiers dans des centaines de petites localités. De plus, en vertu d'accords spéciaux, elle assure les services policiers dans près de 200 municipalités, dont plusieurs sont très peuplées. La moitié des membres de la GRC sont affectés à des services provinciaux et municipaux de police.

Le tableau 1 montre la répartition des membres de la Gendarmerie par région et par province.

Le nombre de plaintes du public visant la Gendarmerie varie surtout en fonction de la nature et du volume des tâches policières. L'application du code de la route exige des policiers un plus grand contact avec le public que, par exemple, des enquêtes sur de subtils crimes économiques ou commerciaux. Les nombreux membres affectés à des tâches administratives au quartier général de la GRC à Ottawa et à des missions nationales de police n'ont pas le même contact avec le public que leurs collègues effectuant des enquêtes et assurant des services de police dans la collectivité.

TABLEAU 1
Répartition des membres de la GRC, par région — 1983

	Total	Région du Pacifique	Région des Prairies				Région du Centre		Région de l'Atlantique			
		C.-B.	Y.T.	ALB.	SASK.	MAN.	TN.-O.	ONT.*	QUÉ.	N.-B.	T.-N.	N.-É.	I.-P.-É.
Fédéral	8 987	1 036	36	612	284	313	33	4 905	1 192	166	130	249	31
		1 072		1 242				6 097		576			
Provincial	5 849	1 505	95	1 084	799	594	221	0	0	431	470	557	93
		1 600		2 698				0		1 551			
Municipal	3 068	1 941	0	591	218	166	0	0	0	77	0	63	12
		1 941		975				0		152			

Total	17,904 (100%)	4,613 (26%)	4,915 (27%)	6,097 (34%)	2,279 (13%)

* *Le nombre de membres indiqués pour l'Ontario comprend les membres de la GRC en poste au quartier général à Ottawa. Les deux divisions régionales actives en Ontario ont des effectifs totaux de 2 139, c'est-à-dire 12p. 100 de l'ensemble des effectifs de la Gendarmerie.*

Le mandat situé en contexte

Le mandat de la Commission est limité à la conduite de la GRC.

Il faut, pour bien cerner le contexte dans lequel doit s'exercer ce mandat, examiner l'ensemble de l'action policière au Canada et voir un peu dans quelle mesure celle-ci est soumise à une vérification indépendante. Certaines provinces, par exemple, ont adopté des dispositions législatives créant des procédures de plainte du public pour leurs polices provinciale et municipale. Il est également vrai que certains organismes fédéraux autres que la GRC exercent des pouvoirs de police sans être pour cela soumis à l'action éventuelle d'une procédure légale de plaintes du public. Ajoutons que, dans certains cas, la mission policière a été « privatisée » comme en témoigne la multiplication des gardiens de sécurité armés et le développement des services de gardiennage aussi bien dans le secteur privé que public.

Dans le domaine de la sécurité nationale, le Service canadien du renseignement de sécurité exerce des pouvoirs analogues à ceux de la police et peut, dans le cadre d'une enquête, par exemple, utiliser des moyens de surveillance tant physiques qu'électroniques. La *Loi sur le SCRS* prévoit une procédure des plaintes avec examen externe par le Comité de surveillance des activités de renseignement de sécurité.

Il convient également de tenir compte de l'expérience d'autres pays. En Australie, par exemple, les pouvoirs de l'Ombudsman s'étendent aux plaintes du public à l'encontre de la police fédérale australienne (une force de police égale à environ 20 p. 100 de la GRC). Les plaintes déposées à l'encontre de la police de New South Wales (qui compte plus de 12 000 membres) sont confiées à l'Ombudsman de l'État.

La Commission des plaintes du public est entrée en activité à une époque où s'est posée, à de nombreuses reprises, la question de l'examen indépendant des comportements policiers :

- le Québec et la Colombie-Britannique avaient adopté des dispositions législatives constituant une nouvelle approche en matière d'examens et d'enquêtes externes;
- la Commission royale sur l'affaire Marshall arrivait à terme en Nouvelle-Écosse;
- au Manitoba, l'enquête publique sur l'administration de la justice et les peuples autochtones était déjà bien lancée;
- le gouvernement de l'Alberta avait créé une commission d'enquête sur les activités policières relatives à la tribu Blood;
- des agents de police de Montréal et de Toronto, avaient abattu trois noirs (Anthony Griffin, Lester Donaldson et Michael Wade Lawson), ce qui a beaucoup attiré d'attention et suscité un débat passionné. Des accusations ont été portées, et on a procédé à des enquêtes médico-légales et autres. Le Solliciteur général de l'Ontario a créé un groupe de travail sur les relations raciales et la police et en a confié la présidence à Clare Lewis, Commissaire des plaintes du public pour le Grand Toronto;
- en Colombie-Britannique, une Commission royale d'enquête sur les blessures qu'aurait subies Michael Albert Jacobsen au cours de son séjour dans le centre de détention de la police municipale de Vancouver, termina son rapport. La Commission conclut que Jacobsen avait effectivement été agressé par la police pendant sa période de détention, qu'on lui avait cassé la rotule et que les policiers en cause avaient menti sous serment et s'étaient entendus entre eux pour taire la vérité.

L'examen externe et les enquêtes portant sur les comportements des policiers s'avèrent une garantie essentielle et nécessaire dans le cadre d'une société libre et démocratique.

CHAPITRE 2 L'ORGANISATION DE LA COMMISSION

Le président de la Commission a été nommé le 1er février 1988. À cette époque, la Commission n'avait aucun autre membre, pas de personnel et pas de locaux.

L'objectif visé par le Président était de parvenir, dans les meilleurs délais, à un bon fonctionnement de la Commission. Il voulait satisfaire au désir qu'avait le gouvernement de répondre aux attentes du public vis-à-vis la mise en place d'un organisme indépendant d'étude des plaintes. Cet objectif était étroitement lié à la question de la rétroactivité. À supposer que la loi n'ait pas effet rétroactif (voir le chapitre 6), les incidents s'étant produits avant l'entrée en activité de la Commission seraient hors de sa compétence.

La Commission a réussi à s'organiser dans des délais très brefs en raison de la coopération tout à fait exceptionnelle des représentants des divers organismes centraux du gouvernement, du Secrétariat du Solliciteur général ainsi que de la GRC.

Les sept mois de préparation

Le Président se fixa comme objectif de rendre la Commission opérationnelle dans les six mois. Il en fallut en fait, sept.

Au cours de cette période de sept mois :

- des pourparlers intensifs ont été tenus avec les organismes centraux ainsi qu'avec le Secrétariat du Solliciteur général afin de fixer les besoins en matière de locaux, de ressources financières et de personnel;

- des locaux provisoires furent loués dans l'immeuble Fontaine à Hull et on commença à prévoir l'aménagement de locaux permanents;
- à la demande du Solliciteur général, le Président procéda aux consultations requises par la loi avec les ministres chargés de la police dans les provinces et les territoires en vue de procéder à la nomination de membres à temps partiel en provenance de leurs juridictions;
- des membres à temps partiel furent nommés pour les huit provinces ayant des contrats de police avec la GRC et pour le Yukon, avec deux membres à titre particulier (un de l'Ontario et un du Québec), ainsi qu'un certain nombre de suppléants. Le membre provenant des Territoires du Nord-Ouest, ainsi que son suppléant, furent nommés plus tard;
- le vice-président fut nommé;
- le recrutement du personnel de la Commission se déroula dans les meilleurs délais et, au 30 septembre, étaient déjà en place le directeur exécutif, le directeur des plaintes (Est), l'avocat général, le conseiller principal en communications, le chef de bureau, un agent des plaintes ainsi que les membres essentiels du personnel de bureau et de secrétariat. Le directeur des plaintes (Ouest) et un deuxième agent des plaintes avaient, à cette date, déjà été choisis et se joignirent aux effectifs dans les mois qui suivirent;
- on demanda, sur un certain nombre de questions, une opinion juridique : l'effet rétroactif de la Partie VII; l'application, dans le cadre de la procédure des plaintes du public, des principes applicables en matière de droit administratif; les liens entre la procédure disciplinaire de la GRC et la procédure des plaintes du public; le degré d'ouverture qu'il convient d'assurer à la procédure des plaintes selon les dispositions de la *Loi*

sur la protection des renseignements personnels; ainsi que les rôles respectifs du Président et de la Commission;

- des procédures internes furent mises en place pour la réception et la demande d'examen des plaintes, pour assurer l'informatisation des dossiers de plaintes;
- après avoir demandé conseil, on entreprit l'élaboration d'un projet de règles de pratique et de procédures pour les audiences de la Commission;
- des réunions furent organisées avec les dirigeants de la police dans les 10 provinces et les deux territoires, toutes les commissions provinciales de police et tous les organismes analogues chargés d'examiner les plaintes formulées par le public contre la police, afin de profiter de leur expérience et d'examiner avec eux les mécanismes de coopération et de coordination qu'il conviendrait de mettre en place;
- de nombreuses réunions de consultation furent organisées avec la GRC, à son quartier général d'Ottawa, afin d'obtenir divers renseignements de base, d'expliquer les fonctions et les besoins de la Commission et de consulter ses membres sur l'élaboration de procédures compatibles, et d'examiner aussi diverses autres questions;
- le Président rendit visite à presque toutes les divisions de la Gendarmerie afin d'y rencontrer les officiers commandants et autres officiers supérieurs et de s'entretenir avec eux de la procédure du traitement des plaintes. Il prononça une allocution dans le cadre de la Conférence des représentants divisionnaires et officiers commandants qui s'est tenue à Ottawa au mois de mars 1988 et envoya à chaque membre de la Gendarmerie une lettre personnelle expliquant le rôle de la Commission;
- l'élaboration d'une stratégie de communications pour la Commission fut entamée;
- une ligne téléphonique sans frais pour faciliter au public l'accès à la Commission fut installée;

- le Président, le Vice-président et certains membres du personnel assistèrent à la conférence de l'International Association for Civilian Oversight of Law Enforcement en septembre 1988 à Montréal, afin de prendre conseil auprès de collègues assurant des responsabilités analogues dans de nombreux autres pays.

Les six premiers mois

Nous examinerons au chapitre 4 l'expérience acquise par la Commission en matière de plaintes, au cours de ses six premiers mois d'activité.

Voici quelques aspects importants de l'activité organisationnelle et administrative pour la période allant du 30 septembre 1988 au 31 mars 1989 :

- conception et préparation des locaux permanents de la Commission au 60 de la rue Queen (Ottawa) (l'emménagement de la Commission a eu lieu le 1er mai 1989);
- planification et installation d'un bureau régional à Vancouver pour desservir la Colombie-Britannique et le Yukon (le bureau a ouvert le 15 mai 1989);
- planification relative à l'installation de bureaux régionaux dans les Prairies et dans les provinces de l'Atlantique, leur installation dépendant du budget affecté à la Commission;
- recrutement d'un directeur régional pour le bureau de Vancouver, de trois autres agents des plaintes (dont un pour Vancouver) et d'un conseiller principal en politiques; à la fin de mars, le personnel de la Commission, y compris le Président et le Vice-président, comptait 20 membres;
- début du recrutement d'un certain nombre d'anciens policiers capables et expérimentés (de services autres que la GRC) un peu partout au Canada, pour mener des enquêtes selon les besoins;

- progrès sensibles dans l'élaboration d'un système informatisé de classement des plaintes, et le commencement de discussions avec la GRC pour créer des systèmes informatiques compatibles;
- mise au point finale du projet de texte sur les règles de pratique et de procédure;
- première réunion plénière de la Commission à Ottawa au début de décembre. Les principaux sujets de discussion ont été la question de la rétroactivité, le projet de règles de pratique et de procédure, les rôles respectifs du Président et de la Commission, ainsi que les plans touchant la croissance de cette dernière;
- le jour précédant la première réunion, lors d'un séminaire organisé à l'intention des membres de la Commission et auquel avaient été conviés des représentants de la Gendarmerie, du Secrétariat du Solliciteur général et du Comité externe d'examen, on présenta des exposés touchant le rôle et les procédures de la Commission, la manière dont fonctionne la procédure de la GRC en matière de plaintes du public et les opinions de la Gendarmerie sur la Partie VII, le sentiment qu'éprouvent les peuples autochtones au sujet du dépôt de plaintes touchant la conduite de la GRC et l'expérience d'autres personnes ou d'autres organismes ayant eu à s'occuper de plaintes contre la police;
- le Président s'est réuni avec plusieurs représentants d'organisations autochtones et d'organismes se consacrant aux libertés civiles. Pour expliquer le rôle de la Commission, il présenta un exposé écrit dans le cadre de l'enquête sur l'affaire Marshall en Nouvelle-Écosse et comparut, au Manitoba, devant la Commission d'enquête sur l'administration de la justice et les peuples autochtones;
- le Président prit la parole à Regina à l'automne, dans le cadre de la conférence des représentants divisionnaires et officiers commandants de la GRC;

- des recherches furent entreprises sur la législation provinciale visant les plaintes du public sur la conduite des policiers;

- l'élaboration des directives sur les conflits d'intérêt et adoption de mesures en vue d'assurer que les membres de la Commission et l'ensemble de son personnel répondent aux conditions fixées par le gouvernement.

* * *

D'après la *Loi sur la GRC*, le siège de la Commission doit être situé, au Canada, dans le lieu désigné par le gouverneur en conseil. Aux termes d'un décret en conseil signé le 18 décembre 1986, ce lieu est Ottawa. Il faudra également prévoir des bureaux régionaux afin de garantir aux Canadiens un accès facile à la Commission et de favoriser le bon fonctionnement de cette dernière. Ainsi que nous l'avons déjà dit, le premier bureau régional, celui de Vancouver, a ouvert au mois de mai 1989.

PLAINTES

PARTIE II

CHAPITRE 3 PRÉVISION DES PLAINTES

Le présent chapitre contient des prévisions du nombre de plaintes et leur répartition géographique, qui seront traitées annuellement en vertu de la Partie VII de la *Loi sur la GRC*.

Nombre de plaintes et leur répartition

Les prévisions se fondent sur l'expérience de la GRC au cours des six dernières années et la Commission prévoit qu'au moins 2 000 plaintes seront déposées chaque année en vertu de la Partie VII dans un avenir prévisible.

La répartition de la charge de travail sera un facteur important des décisions prises par la Commission sur la façon de donner accès au public au processus des plaintes, soit par l'ouverture de bureaux régionaux, soit autrement.

Ces prévisions sont importantes car les six premiers mois d'existence de la Commission ne fourniront pas un instantané exact de la charge de travail typique de la Commission à l'avenir.

Ceci s'explique par trois raisons. En premier lieu, la Commission n'est pas compétente à l'égard des incidents survenus avant le 30 septembre 1988, à moins de décision contraire de la Cour fédérale du Canada sur la rétroactivité.

Deuxièmement, avant qu'un plaignant insatisfait de la façon dont la GRC a réglé sa plainte puisse demander un examen à la Commission, la plainte doit avoir fait l'objet d'une enquête officielle de la GRC et d'un rapport. Ce processus exige présentement plusieurs mois.

Troisièmement, à ce stade du développement de la Commission, celle-ci est mal connue du public. Cette situation se modifiera, lorsque la Commission aura

tenu un certain nombre d'auditions et lorsque sa stratégie de communications aura été appliquée.

Les tableaux 2 et 3 donnent une idée du volume des plaintes qui devraient être soumises au processus de la Partie VII à l'heure actuelle, de même que leur répartition géographique prévue.

Les points saillants des tableaux 2 et 3 sont les suivants:

- le nombre moyen de plaintes par année est d'environ 2 000;
- entre 1983 et 1987, près de 40% des plaintes provenaient de la Colombie-Britannique; en 1988, le chiffre était de 45%;
- environ 80% des plaintes proviennent des quatre provinces de l'Ouest;
- moins de 10% des plaintes proviennent de l'Ontario et du Québec réunis;
- environ 12% des plaintes proviennent des quatre provinces de l'Atlantique.

La comparaison de la répartition géographique des membres de la GRC selon le tableau 1 et des plaintes selon les tableaux 2 et 3, révèle des différences significatives:

- 25% des membres de la Gendarmerie sont situés en Colombie-Britannique, mais 40% (45% en 1988) des plaintes proviennent de cette province;
- l'Alberta compte 13% de la Gendarmerie, 17% des plaintes émanent de cette province;
- 7% des membres de la Gendarmerie sont situés au Québec, où la GRC n'assure pas de services provinciaux ou municipaux de police, mais les plaintes en provenance de cette province sont de moins de 2% du total national;
- les quatre provinces de l'Atlantique comptent 13% de la Gendarmerie (en excluant la récente prise en charge de la police des routes du Nouveau-

TABLEAU 2
Répartition des plaintes reçues contre des membres de la GRC, 1983-1988
Nombre de plaintes

Année	Région du Pacifique	Région des Prairies	Région du Centre	Région de l'Atlantique	Total
1983	823 / 847 / 24 (C.-B. / Y.T.)	360 / 170 / 162 / 27 (ALB. / SASK. / MAN. / T.N.-O.) = 719	150 / 36 (ONT. / QUÉ.) = 186	83 / 82 / 77 / 15 (N.-B. / T.-N. / N.-É. / Î.P.É.) = 257	2 009
1984	738 / 767 / 29 (C.-B. / Y.T.)	378 / 226 / 178 / 44 (ALB. / SASK. / MAN. / T.N.-O.) = 862	112 / 28 (ONT. / QUÉ.) = 140	57 / 87 / 80 / 12 (N.-B. / T.-N. / N.-É. / Î.P.É.) = 236	1 969
1985	472 / 491 / 19 (C.-B. / Y.T.)	139 / 171 / 144 / 23 (ALB. / SASK. / MAN. / T.N.-O.) = 477	61 / 13 (ONT. / QUÉ.) = 74	28 / 63 / 93 / 5 (N.-B. / T.-N. / N.-É. / Î.P.É.) = 189	1 231*
1986	623 / 634 / 11 (C.-B. / Y.T.)	374 / 164 / 174 / 41 (ALB. / SASK. / MAN. / T.N.-O.) = 753	140 / 19 (ONT. / QUÉ.) = 159	12 / 35 / 71 / 11 (N.-B. / T.-N. / N.-É. / Î.P.É.) = 129	1 675
1987	848 / 868 / 20 (C.-B. / Y.T.)	410 / 126 / 293 / 80 (ALB. / SASK. / MAN. / T.N.-O.) = 909	167 / 41 (ONT. / QUÉ.) = 208	75 / 70 / 99 / 17 (N.-B. / T.-N. / N.-É. / Î.P.É.) = 261	2 246
1988	977 / 989 / 12 (C.-B. / Y.T.)	349 / 167 / 239 / 45 (ALB. / SASK. / MAN. / T.N.-O.) = 800	138 / 31 (ONT. / QUÉ.) = 169	39 / 39 / 95 / 26 (N.-B. / T.-N. / N.-É. / Î.P.É.) = 199	2 157

* *Les statistiques de 1985 sont jugées inexactes en raison de la mise en place d'un nouveau système informatique.*

TABLEAU 3
Répartition des plaintes reçues contre les membres de la GRC, 1983-1988 en pourcentage

Année	Région du Pacifique	Région des Prairies	Région du Centre	Région de l'Atlantique
1983	41 % C.-B. 42 % Y.T. 1	% ALB. 18 SASK. 9 MAN. 8 TN-O. 1	% ONT. 7 QUÉ. 2	% N.-B. 4 T.-N. 4 N.-É. 4 I.P.É. 1
1984	C.-B. 37 39 Y.T. 2	ALB. 19 SASK. 12 MAN. 9 TN-O. 2 42	ONT. 6 QUÉ. 1 7	N.-B. 3 T.-N. 4 N.-É. 4 I.P.É. 1 12
1985	C.-B. 38 40 Y.T. 2	ALB. 11 SASK. 14 MAN. 12 TN-O. 2 39	ONT. 5 QUÉ. 1 6	N.-B. 2 T.-N. 5 N.-É. 7.6 I.P.É. 0.4 15
1986	C.-B. 37 38 Y.T. 1	ALB. 22 SASK. 10 MAN. 10 TN-O. 3 45	ONT. 8 QUÉ. 1 9	N.-B. 1 T.-N. 2 N.-É. 4 I.P.É. 1 8
1987	C.-B. 38 39 Y.T. 1	ALB. 18 SASK. 6 MAN. 13 TN-O. 3 40	ONT. 7 QUÉ. 2 9	N.-B. 3 T.-N. 3 N.-É. 5 I.P.É. 1 12
1988	C.-B. 45 46 Y.T. 1	ALB. 16 SASK. 8 MAN. 11 TN-O. 2 37	ONT. 7 QUÉ. 1 8	N.-B. 2 T.-N. 2 N.-É. 4 I.P.É. 1 9

Brunswick par la GRC) et génèrent en moyenne sur six ans, 11% des plaintes.

Ces différences sont attribuables dans une large mesure à la nature des services de police assurés par la Gendarmerie dans chaque région et, par conséquent, à la nature de son contact avec le public.

Justification des plaintes

La Gendarmerie a jugé, au cours des deux dernières années, que 22 p. cent des plaintes étaient justifiées ou fondées. Elle a conclu que 24 p. cent en 1987 et 21 p. cent en 1988 étaient « non prouvées », et que 54 p. cent en 1987 et 57 p. cent en 1988 étaient « non fondées ».

La distinction entre « non prouvées » et « non fondées » semble signifier que dans le dernier cas la plainte n'avait aucun fondement, alors que dans le premier il est, selon la Gendarmerie, impossible d'établir si elle est fondée.

On ne peut que formuler des hypothèses à ce stade quant à savoir si les plaintes en vertu de la Partie VII de la *Loi sur la GRC* seront jugées fondées de la même façon.

Le décompte des plaintes

Pour les besoins de la Commission, on a fait le décompte des plaintes en tenant compte du nombre de membres de la Gendarmerie visés. On utilise également pour le décompte des plaintes le nombre de sujets de plainte.

Un exemple permettra de mieux comprendre.

Supposons que les gendarmes A et B procèdent, ensemble, à l'arrestation d'une femme sur la route et l'emmènent à leur détachement. Plus tard, la femme se plaint que les deux gendarmes ont fait un usage

excessif de la force lors de son arrestation et que, une heure plus tard, le gendarme A, dans les locaux du détachement, a manqué de courtoisie à son égard. Voila donc deux plaintes contre le gendarme A et une contre le gendarme B.

Il convient de traiter chaque membre de la Gendarmerie de manière distincte, car la plainte formulée contre l'un d'entre eux peut se révéler fondée alors que celle formulée contre l'un de ses collègues ne le serait pas.

S'il s'agit d'une allégation touchant un seul membre mais visant plusieurs faits connexes arrivés dans un délai très court et dans le cadre d'un seul incident, il peut être préférable d'en faire un tout et de ne compter qu'une seule plainte. Chaque situation doit être examinée en vertu des circonstances qui lui sont propres.

CHAPITRE 4 Expérience des plaintes

Le présent chapitre consiste en un examen des plaintes reçues par la Commission au cours de ses six premiers mois de fonctionnement : du 30 septembre 1988, date à laquelle la Partie VII de la *Loi sur la GRC* est entrée en vigueur, jusqu'au 31 mars 1989, date qui marque la fin de la période couverte par le rapport d'activité de la Commission.

Ces plaintes sont soit des plaintes déposées directement devant la Commission à l'origine, soit des plaintes portées par le Président, ou qui ont fait l'objet d'une enquête menée par le Président et celles renvoyées devant la Commission par des plaignants insatisfaits de la manière dont la GRC a réglé leurs plaintes.

Ces plaintes ne représentent que 13 p. cent des 1 081 plaintes reçues en vertu de la Partie VII dans les six premiers mois.

En février 1989, le Président a demandé au Commissaire de la GRC de lui fournir les renseignements nécessaires à la préparation d'une analyse générale. À la mi-avril la GRC commença à faire parvenir des renseignements au Président, mais, au moment de rédiger le rapport, ces renseignements s'avéraient insuffisants pour qu'ils soient incorporés dans ce chapitre.

Dans le chapitre 5 nous revenons sur les difficultés d'obtenir ces renseignements.

D'après les dispositions de la Partie VII, les plaignants peuvent, en premier lieu, porter leurs plaintes soit devant la Commission, soit devant tout membre de la GRC, soit devant toute personne nommée selon la *Loi sur la GRC*, ou soit encore devant l'autorité provinciale compétente.

Au 31 mars 1989, 143 plaintes visant la conduite des membres de la GRC, avaient été déposées directement devant la Commission. Ces plaintes proviennent d'incidents qui ont eu lieu antérieurement. Les plaintes émanant d'incidents qui se sont produits avant le 30 septembre 1988 seront discutées plus loin dans ce chapitre.

Dès le dépôt d'une plainte devant la Commission, la Gendarmerie en est avisée.

Le président de la Commission peut décider, en fonction de l'intérêt public, de mener sa propre enquête ou de convoquer une audience de la Commission. Au cours des six premiers mois, le Président, invoquant l'intérêt public, a entamé trois enquêtes sur des plaintes.

La Gendarmerie doit essayer d'en arriver à un règlement à l'amiable, que la plainte ait été portée devant elle directement ou indirectement, en passant par la Commission ou les autorités provinciales. Si elle ne peut pas en arriver à un règlement à l'amiable, la Gendarmerie est tenue d'enquêter sur la plainte. Aux termes de la Loi, la Gendarmerie doit transmettre au plaignant un rapport sur les mesures prises à date ou sur les progrès de l'enquête, au plus tard 45 jours après avoir été avisée de la plainte et, après cela, tous les mois jusqu'au dépôt du rapport final. Tout plaignant qui s'estime insatisfait de la manière dont la Gendarmerie a réglé la plainte, il ou elle peut renvoyer celle-ci devant la Commission pour examen.

Au 31 mars 1989, six plaintes avaient été ainsi renvoyées devant la Commission pour examen. D'après la Loi, ces demandes d'examen doivent être faites par écrit. La Commission a reçu un certain nombre de demandes d'examen, par téléphone, et a dû expliquer à ces plaignants les exigences de la loi.

La Commission, lorsqu'une plainte est renvoyée devant elle, doit aviser la Gendarmerie qui est alors

tenue de transmettre au président de la Commission une copie du rapport et des autres documents pertinents qu'elle a en sa possession.

Les plaintes portées devant la Commission

Le tableau 4 présente, avec une répartition par région, les 143 plaintes déposées devant la Commission au cours de ses six premiers mois d'activité. Elles portent sur des incidents qui se sont produits à partir du 30 septembre 1988.

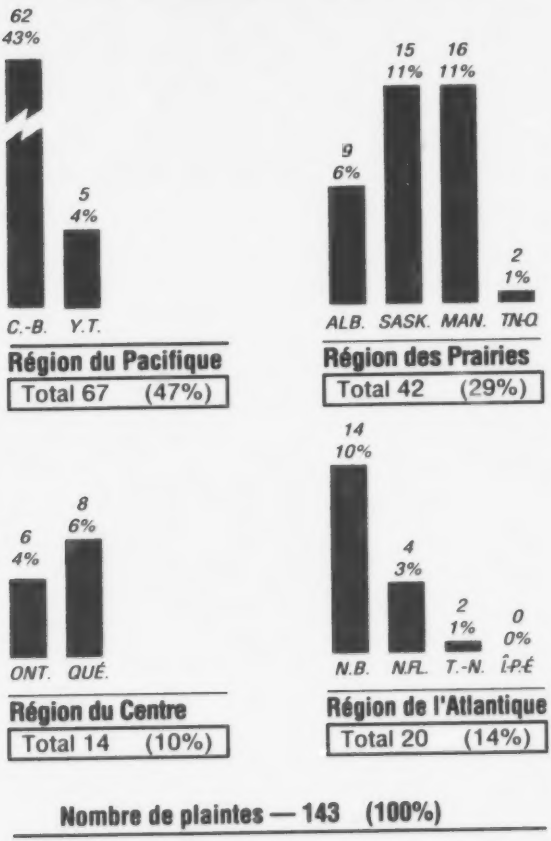
De ces 143 plaintes, 117 ont été reçues par téléphone, 25 par lettre et une déposée en personne.

Les plaintes se répartissent entre les cinq catégories suivantes :

- *Attitude* : Cette catégorie de plaintes vise les membres de la Gendarmerie ayant fait preuve d'un manque de politesse ou de courtoisie, ou ayant affecté une mauvaise attitude.
- *Insuffisances du service* : Ces plaintes reprochent aux membres de la Gendarmerie de ne pas avoir, en réponse à une plainte, pris les mesures qu'il convenait de prendre, porté une accusation, assuré un service adéquat ou satisfaisant.
- *La conduite de l'enquête* : Ces plaintes visent les enquêtes menées de manière insatisfaisante ou irrégulière, les retards intervenus dans la conduite d'une enquête, le fait de s'être introduit par la force dans un local, ou d'y avoir mené une fouille irrégulière, la rétention non justifiée de biens, la remise en mauvais état de biens saisis, le fait de ne pas s'être identifié en tant que membre de la Gendarmerie ou le fait de ne pas avoir donné, à un individu, lecture de ses droits.

TABLEAU 4

Plaintes déposées devant la Commission entre le 30 septembre 1988 et le 31 mars 1989, avec répartition par région



Nombre de plaintes — 143 (100%)

- *La conduite oppressive* : Entre dans cette catégorie de comportement toute conduite oppressive, toute ingérence, harcèlement, traitement insatisfaisant après arrestation, piège ou provocation, accusation injustifiée, partie-pris ou omission délibérée, menace ou intimidation, non respect de la liberté d'expression, l'obligation, sans justification, de se soumettre à une séance de photographie ou de prise d'empreintes digitales, ou la détention sans traitement des blessures; et
- *Force excessive* : Cette catégorie recouvre l'emploi excessif de la force, les coups et blessures pendant la période de détention, et les coups et blessures alors que la personne n'est pas en détention.

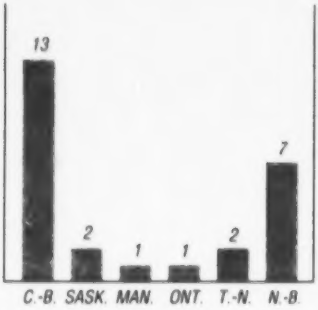
Le tableau 5 présente la répartition, par catégorie, et province (ou territoire), des plaintes enregistrées.

Voici huit exemples tirés des 143 plaintes enregistrées. Aucune de ces plaintes n'a été portée devant la Commission pour examen.

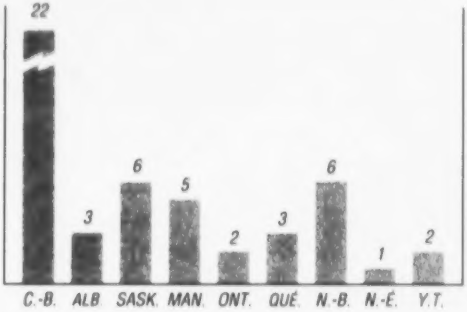
Force excessive

Une femme s'est plainte, devant la Commission, du fait qu'un membre de la GRC avait utilisé une force excessive contre elle, dans un centre de détention. Elle soutient que tôt, un matin du mois de mars 1989, elle a été arrêtée sur une route de l'Alberta par des membres de la GRC. On l'a arrêtée pour conduite en état d'ébriété et on l'a emmenée dans les locaux du détachement de la GRC pour la soumettre à un test d'ivressomètre. Une fois dans les locaux de la police, elle a refusé de répondre aux questions qui lui étaient posées ou de permettre à la GRC de prendre ses empreintes digitales. Cette femme a ensuite été emmenée dans un centre de détention où elle a été incarcérée en attendant l'audience du tribunal qui devait avoir lieu plus tard dans la journée. Elle soutient qu'au centre de

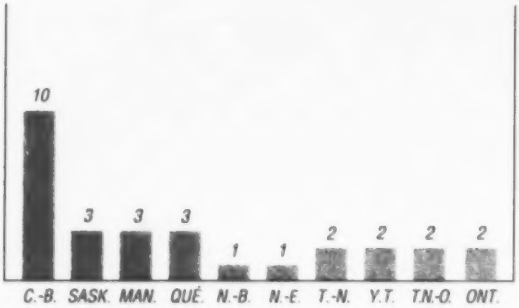
TABLEAU 5
Répartition par catégorie et province (ou territoire) des plaintes



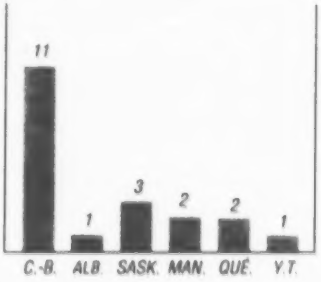
Attitude — 26



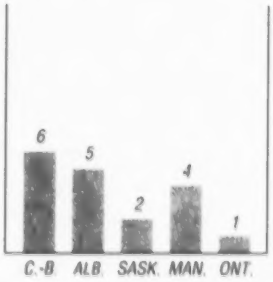
Insuffisances du service — 50



Conduite de l'enquête — 29



Conduite oppressive — 20



Recours excessif à la force —18

Total 143

détention un membre féminin de la GRC l'a poussée contre un mur, lui a tiré les cheveux et lui a donné des coups de pied, lui infligeant des ecchymoses aux chevilles.

Les conduites oppressives

Une femme a téléphoné à la Commission pour se plaindre d'un comportement qu'elle a jugé oppressif de la part de membres de la GRC à l'occasion de fouilles qu'ils ont effectuées. Elle soutient qu'au mois d'octobre 1988, deux membres de la GRC sont venus à son domicile dans une petite communauté québécoise pour arrêter son ancien conjoint de fait contre lequel un mandat d'arrestation avait été émis. Les membres de la GRC revinrent deux fois ce jour-là avant de trouver l'homme qu'ils cherchaient. La première fois, ils se présentèrent au domicile de la femme qui leur demanda de ne pas interroger sa mère qui vivait dans la maison voisine, étant donné que la mère revenait tout juste de l'hôpital où, au cours des six dernières semaines, elle avait subi trois importantes interventions chirurgicales. D'après la plaignante, les agents de la GRC sont tout de même allés à la maison de la mère pour l'interroger. Ils revinrent plus tard dans la journée et, à 22 heures, revinrent une troisième fois, trouvèrent l'homme qu'ils recherchaient et l'arrêtèrent. La femme s'est plaint du fait qu'on ne lui avait donné ni le temps ni l'occasion de prendre connaissance du mandat d'arrestation; du fait que les membres étaient allés voir sa mère bien qu'elle leur ait demandé de ne pas le faire; et du fait que leur fouille du domicile avait fait une telle impression sur les enfants que l'un d'entre eux avait subi une crise d'épilepsie.

L'attitude

Une femme a téléphoné à la Commission pour se plaindre de la conduite d'un membre de la GRC. Elle a déclaré qu'au mois de décembre 1988, elle était, dans une ville des provinces de l'Atlantique,

à la recherche de sa fille adolescente qui avait fait une fugue. Elle a retrouvé sa fille qui a refusé de rentrer avec elle au domicile familial. La mère a pris contact avec la police municipale du lieu, qui ont pris la fille sous leur garde et l'ont amenée à un poste de police de la ville. Après avoir été contacté par la police municipale, un membre de la GRC est venu au poste de police et a conduit la jeune fille au bureau du bien-être du lieu. Au cours de sa conversation avec la jeune fille au bureau du bien-être, le membre de la GRC aurait fait de nombreux commentaires désobligeants à l'endroit de la famille de la jeune fille.

L'attitude

Une femme s'est plainte, devant la Commission, du fait qu'un gendarme s'est montré impoli envers elle et du fait qu'elle a été, sans justification, accusée d'une infraction au code de la route. D'après elle, tôt le matin en février de 1989, alors qu'elle conduisait sa voiture dans un village de la Saskatchewan, elle fut arrêtée par un gendarme de la GRC qui l'accusa de conduire avec négligence. Elle tenta d'expliquer au gendarme que le verglas avait provoqué une embardée de sa voiture mais le gendarme a refusé de croire qu'il s'agissait d'un accident. Selon elle, la discussion avec le gendarme s'est envenimée et il est devenu insolent. La situation étant devenu intolérable, la femme a démarré et le gendarme s'est lancé à sa poursuite. En fin de compte, la femme a été accusée par le gendarme de diverses infractions criminelles au code de la route. Selon la plaignante, les accusations étaient sans fondement.

La conduite de l'enquête

Au mois de décembre 1988, dans un village des provinces de l'Atlantique, s'est produit un accident fatal de la circulation. Le membre de la GRC qui arriva sur les lieux de l'accident aurait, pré-

tend-t-on, envoyé un message radio pour appeler une équipe de secours cinq ou huit minutes après son arrivée. On l'accuse également de ne pas avoir autorisé les gens se trouvant sur place à voir si certains des occupants de la voiture avaient survécu à l'accident. D'après le plaignant, le gendarme menaça de porter une accusation contre eux s'ils ne suivaient pas ses instructions de s'abstenir de vérifier le véhicule. Un proche parent des victimes a écrit au Procureur général de la province pour se plaindre du fait que le gendarme de la GRC qui s'était rendu sur les lieux n'avait pas assez rapidement pris contact avec l'équipe de secours et avait, sans justification, retenu les témoins de l'accident. Cette plainte a été transmise à la Commission par les services du Procureur général.

La conduite de l'enquête

Une femme s'est plainte du fait qu'on avait, sans raison, inculpé son ami. Elle a raconté qu'au mois d'octobre 1988, son ami s'était rendu au domicile de son ancienne conjointe et avait emmené ses enfants en promenade. Lors de son retour au domicile de son ancienne conjointe, l'homme trouva celle-ci couchée avec un autre. L'homme estima que cette situation avait été voulue par son ancienne conjointe afin de le provoquer à une querelle, mais il quitta le domicile et se rendit chez son amie. Apparemment, l'ancienne conjointe téléphona au détachement de la GRC situé dans le Yukon pour accuser son ancien mari de l'avoir attaquée. Par la suite, la GRC accusa l'ancien mari de divers types d'agressions.

Quelques jours après cet incident, l'amie de l'intéressé porta plainte devant la Commission du fait que la GRC n'avait pas mené correctement l'enquête avant de porter contre son ami des inculpations pénales, l'accusation étant sans fondement. La Commission renvoya la plainte au Commissaire de la GRC pour enquête.

Les insuffisances du service

En décembre 1988, dans une petite communauté rurale de l'Atlantique, des membres de l'église locale téléphonèrent au détachement de la GRC pour se plaindre d'un vol à l'église. Après plusieurs jours de silence de la part de la GRC, les membres de l'église se rendirent dans les locaux du détachement. Or, il semble que l'appel initial n'ait même pas été consigné. Les membres de l'église écrivirent une lettre de plainte au Procureur général de la province pour lui signaler l'incident. Dans cette lettre, ils notèrent également que d'autres membres de leur église avaient pris contact avec le détachement local une nuit de décembre, aux environs de 23 heures pour se plaindre de diverses activités criminelles se produisant à l'occasion d'une danse pour adolescents. Aucun membre de la GRC ne répondit à leur demande d'aide. Le jour suivant, ils rappelèrent au téléphone pour s'entendre dire que la GRC s'était rendue sur les lieux à environ 1h30 du matin, soit quelque deux heures et demie après l'appel initial. Le bureau du Procureur général a transmis la plainte à la Commission.

Les insuffisances du service

Un homme se plaignit à la Commission du fait que des membres de la GRC avaient refusé de faire enquête sur une agression qu'il leur avait signalée ainsi que le vol de sa voiture. Il expliqua qu'au mois de janvier 1989, il voyageait sur une route de la Colombie-Britannique, accompagné de deux membres de sa famille et de deux autres passagers qu'il ne connaissait pas. S'étant arrêté sur le bord de la route pour nettoyer le pare-brise, il se vit agressé par les deux passagers non identifiés qui partirent avec sa voiture, le laissant sur le bord de la route. L'homme se rendit au détachement de la GRC, signala l'incident à plusieurs des policiers qui refusèrent de consigner son rapport ou de l'aider à retrouver sa voiture. Plusieurs jours plus tard, l'homme se rendit dans

un autre détachement de la GRC, signala le même incident à un autre membre de la GRC qui consigna le rapport mais ne prit aucune autre mesure.

Les plaintes déposées par le Président

Le Président peut lui-même porter plainte lorsqu'il estime qu'il existe des motifs raisonnables de le faire.

Jusqu'ici il n'a porté qu'une seule plainte. D'après les renseignements qui lui avaient été fournis, de manière anonyme, il semblerait que lors de l'arrestation d'une femme dans un des principaux aéroports canadiens, les agents de la GRC aient utilisé une force excessive.

Le Président a conclu à la fin du mois de mars 1989 qu'il existait, dans les circonstances, des motifs raisonnables de porter plainte. Comme l'y oblige la loi, le Président a avisé le Solliciteur général et le Commissaire de la GRC.

Le rapport de la GRC ne devrait pas tarder.

Les enquêtes du Président

Le président de la Commission peut faire enquête sur une plainte ou convoquer une audience de la Commission s'il estime que cela est conforme à l'intérêt public. Il peut le faire, que la plainte ait ou non fait l'objet d'une enquête, d'un rapport ou toute autre mesure de la part de la Gendarmerie dans le cadre de la partie VII.

Dans les six premiers mois d'activité de la Commission, le Président a entamé trois enquêtes mais n'a convoqué aucune audience en invoquant la clause de l'« intérêt public ».

Voici le résumé des trois plaintes en cours d'enquête. La première enquête débuta en février, et les deux

autres en mars. Les trois enquêtes se poursuivent. Le Président pourrait convoquer une audience de la Commission pour se pencher sur une ou plusieurs de ces plaintes au cas où les enquêtes donnaient à penser qu'une telle démarche semble s'imposer.

Les procédures d'arrestation

Une plainte a été portée devant la Commission dans laquelle le plaignant affirme que le maître-chien de la GRC, alors qu'on arrêtait le beau-fils du plaignant, âgé de 19 ans, a délibérément lâché son chien et l'a laissé attaquer et mordre le garçon à plusieurs reprises. De plus, le plaignant a mentionné que les deux autres officiers participant à l'arrestation ont employé une force excessive. Lorsque, par la suite, l'adolescent fut emmené dans les locaux du détachement, un autre membre de la GRC aurait tourné en dérision le fait que l'adolescent avait été mordu et blessé. Le jeune homme fut détenu dans une cellule pendant presque 24 heures et pendant cette période on le lui aurait fourni ni vêtement, ni matelas, ni couverture, ni nourriture, ni même quelque chose à boire. Le Président estime que cette plainte soulève des points importants, relativement ceux touchant à l'emploi de chiens policiers et le traitement des prisonniers, et c'est pourquoi l'intérêt public semblerait justifier la tenue d'une enquête.

La liberté de la presse

Le président d'une association de journalistes s'est plaint qu'un journaliste britannique avait été détenu irrégulièrement et interrogé lors de son entrée au Canada à l'un des principaux aéroports canadiens. Il semblerait que son interrogatoire ait duré d'une à deux heures et ait porté sur les reportages qu'il aurait effectués sur le terrorisme ainsi que sur diverses organisations secrètes. Le plaignant considère que ceci constitue un harcèlement injustifié du journaliste. Après s'être plus complètement renseigné, le Président a décidé d'entamer une enquête car la plainte

soulève des questions touchant la liberté de la presse ainsi que d'autres questions relevant de la Charte, et touche donc de près l'intérêt public.

Le recours à la force excessive et la liberté d'expression

Une personne, ayant au préalable obtenu une autorisation de manifester de la municipalité régionale d'Ottawa-Carleton, s'est plainte qu'on l'avait empêchée de déployer, pendant la visite du Président des États-Unis, la banderole qu'elle avait préparée. Elle s'est plainte également qu'on avait utilisé contre elle une force excessive afin de l'empêcher d'exercer sa liberté d'expression. Après avoir examiné la plainte plus à fond, le Président a conclu que l'intérêt public exigeait que l'on enquête sur ces allégations.

Les examens du Président

Au cours des six premiers mois, six plaintes ont été renvoyées aux fins d'examen devant la Commission. La première a été reçue par la Commission le 16 mars et les cinq autres dans les deux semaines suivantes.

Peu après le dépôt de la demande d'examen devant la Commission, la Gendarmerie en a été avisée et la Commission a demandé qu'on lui transmette les rapports et autres informations pertinentes.

Au 19 mai, le Président n'avait pas encore reçu, de la Gendarmerie, les rapports et autres renseignements prévus par la loi. Le délai de six à huit semaines qui se sont écoulées depuis l'avis à la GRC ne constitue pas un élément d'encouragement, s'agissant d'une procédure où les plaignants ne devraient pas avoir à subir de tels retards. Certaines de ces plaintes avaient originairement été déposées dans les trois derniers mois de l'année 1988. Il est à espérer que la Gen-darmerie répondra avec plus de promptitude à l'avenir.

Le Président n'a pas encore été en mesure de donner suite aux six demandes d'examen étant donné qu'il n'a pas encore pu prendre connaissance des documents pertinents.

Les audiences

Au cours des six premiers mois, la Commission n'a tenu aucune audience.

Les audiences ne peuvent être convoquées qu'après examen, ou dans les cas où le Président de la Commission conclut qu'il en va de l'intérêt public. Ainsi que nous l'avons noté plus haut, le Président n'a pas encore terminé l'examen des plaintes qui lui ont été renvoyées.

Les incidents s'étant produits avant le 30 septembre 1988

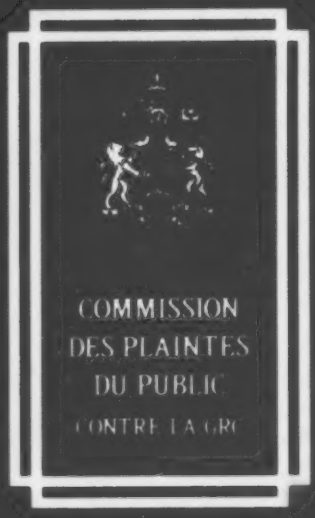
D'après les conseils juridiques qui lui ont été fournis, la Commission estime qu'elle n'a pas compétence vis-à-vis des plaintes touchant des incidents s'étant produits avant le 30 septembre 1988, même si la plainte a été déposée après cette date, tant que la Cour fédérale du Canada ne rendra pas un jugement à l'effet contraire.

Dix-sept plaintes visant la conduite de membres de la Gendarmerie ont été portées à l'attention de la Commission avant le 30 septembre. Dans huit cas, il s'agissait d'une plainte initiale. Dans neuf cas, le problème avait déjà été porté à l'attention de la GRC et, dans deux de ces cas-là, il semble que la Gendarmerie ait réglé la plainte de manière insatisfaisante, du moins en ce qui concerne les plaignants.

Après l'entrée en activité de la Commission le 30 septembre 1988, elle reçut 54 plaintes visant des incidents s'étant produits avant cette date. La Commission a également reçu, à l'égard d'incidents analogues, 25 demandes d'examen (renvois) de la

part de plaignants insatisfaits de la manière dont la GRC avait réglé les plaintes qu'ils avaient initialement déposées touchant des incidents s'étant produits avant le 30 septembre 1988.

Si la Cour fédérale décide que la Commission a compétence, les plaignants en seront avisés. Un jugement dans ce sens pourrait avoir des répercussions importantes sur le plan de travail de la Commission. La question de la rétroactivité est discutée au chapitre 6.



PRÉOCCUPATIONS ET QUESTIONS

PARTIE III

CHAPITRE 5 QUATRE PRÉOCCUPATIONS

Le présent chapitre traite de quatre préoccupations particulières:

1. la portée du terme « conduite » au sens de la Partie VII de la *Loi sur la GRC*;
2. la disponibilité et la qualité des données de la GRC;
3. les pratiques de la GRC quant à l'« annulation » des contraventions; et
4. les opérations de la GRC à l'extérieur du Canada, et la conduite des membres de la Gendarmerie dans une opération donnée.

Les deux premières préoccupations se rapportent à l'application générale de la Partie VII. Les deux dernières concernent des cas particuliers portés à l'attention du Président au cours des six premiers mois d'existence de la Commission et elles présentent toutes deux un intérêt important pour le public.

En ce qui concerne l'annulation des contraventions, le Président a conclu qu'il valait mieux traiter la question dans le présent rapport et qu'il n'y avait pas lieu pour la Commission de prendre d'autres mesures. En ce qui regarde l'opération à l'étranger, il a décidé de déposer une plainte et d'entreprendre une enquête dans l'intérêt public.

1. La portée du terme « conduite »

Des discussions entre la Commission et les fonctionnaires de la GRC ont révélé qu'il y a peut-être une divergence d'opinions quant à l'application de la Partie VII aux services policiers. Selon les fonctionnaires de la GRC, les plaintes portant sur la lenteur à intervenir ou encore sur l'omission d'enquêter ou de porter des accusations ne relèvent pas de la con-

duite, mais plutôt des politiques, du service et du rendement. Aux yeux de la GRC, elles ne sont donc pas visées par la Partie VII.

En limitant la portée du mot conduite, la Gendarmerie a le pouvoir de priver les plaignants du recours à la Partie VII, sans que ceux-ci soient informés de l'existence de ce recours ni que la Commission soit au courant du fait que certaines plaintes de ce genre ont été déposées.

L'exercice de ce pouvoir peut, bien sûr, être approprié dans certaines circonstances. Si la plainte porte sur la politique de la GRC, sans mention de la conduite d'un membre, elle ne relève de toute évidence pas de la Partie VII. Pourtant, ne peut-il pas y avoir des cas où l'on pourrait faire valoir que la plainte relève effectivement de la Partie VII, tandis que la Gendarmerie déciderait unilatéralement de la traiter comme n'en relevant pas? Il devrait y avoir un moyen quelconque de contrôler les décisions prises par la GRC à cet égard, afin de garantir aux plaignants un traitement équitable et correct.

Le Président estime que toute négligence, tout cas d'incompétence ou toute malice imputable à un agent de police dans le cadre d'une enquête correspond à une « conduite dans l'exercice de fonctions prévues » au sens de la *Loi sur la Gendarmerie royale du Canada*. Si un citoyen est accusé d'une infraction et par la suite acquitté, et s'il semble que l'accusation n'était pas fondée sur un motif raisonnable et probable, le citoyen en cause devrait pouvoir déposer une plainte.

Le Président estime que les mêmes considérations s'appliquent au défaut de la police de répondre à des appels à l'aide.

Le législateur a adopté la Partie VII pour donner au public le droit à un examen et à une enquête

indépendants. On ne peut permettre à la Gendarmerie de restreindre arbitrairement la portée de ce droit.

2. Disponibilité et qualité des renseignements de la GRC

Le Président est déçu des réponses de la Gendarmerie à ses demandes de renseignements.

Delais : renvois

Le premier plaignant insatisfait de la façon dont la Gendarmerie avait réglé sa plainte s'est adressé à la Commission le 16 mars 1989. Cinq autres plaintes ont été reçues avant la fin de mars.

Le Président a communiqué au Commissaire de la GRC des doubles des plaintes, le 22 mars dans le premier cas, et au plus tard le 7 avril, dans les cinq autres cas.

Dès qu'il reçoit un tel dossier, le Commissaire de la GRC est tenu de communiquer au Président le rapport envoyé au plaignant, de même que les autres documents que possède la Gendarmerie et qui se rapportent à la plainte.

À la fin de mai, le Président n'avait reçu aucun rapport ni document explicatif à l'égard des six plaintes, et il a donc été incapable de procéder aux examens.

Cette lenteur est inacceptable, et la GRC en a été informée à maintes reprises. La Gendarmerie a déclaré que les retards ont été causés par la nouveauté du processus et par le fait que la division en cause et le quartier général de la GRC doivent donner leur approbation dans chaque cas. La Gendarmerie convient qu'un délai d'un mois serait raisonnable, et c'est là actuellement son objectif.

Rien n'empêche d'envoyer les rapports sur-le-champ à la Commission, avec les documents explicatifs si

possible. Puisque la Gendarmerie aura déjà fait rapport au plaignant et au membre en cause, il n'y a aucune excuse pour ne pas communiquer le rapport sur-le-champ à la Commission. Si la GRC a besoin de plus de temps pour décider de ce qui se rapporte à l'affaire, elle peut envoyer les documents explicatifs après le rapport. Toutefois, le processus ne doit jamais prendre plus d'un mois.

Ce processus présente un autre aspect inacceptable : c'est la Gendarmerie qui décide quels documents sont pertinents. Aucun contrôle ou examen de telles décisions n'est prévu. En cours d'examen, le Président n'aura aucun moyen de savoir si la Commission a reçu tous les documents qui auraient dû lui être communiqués. Toutefois, si une audition s'avérait nécessaire, il serait sans doute possible de découvrir les documents pertinents exclus à tort en ordonnant la communication des dossiers et en contre-interrogeant les témoins.

Délais : demandes d'examen

Comme nous l'avons signalé au chapitre 4, le Président a entrepris trois enquêtes dans l'intérêt public.

Dans le cas de la première enquête, la Gendarmerie a mis du temps à fournir à la Commission les dossiers et les autres renseignements demandés. Cette lenteur équivaut presque au refus de communiquer la documentation demandée.

Le Parlement a conféré au Président le pouvoir d'« enquêter » dans certaines circonstances, mais il n'a pas précisé expressément quels sont ses pouvoirs d'enquête. Le Président n'a pas le pouvoir de convoquer des témoins ni de les interroger, non plus que de perquisitionner. Ces pouvoirs ne sont peut-être pas nécessaires, mais en conférant le pouvoir d'« enquêter », le Parlement avait certainement l'intention d'obliger la GRC à se plier aux souhaits de la Commission lorsqu'elle demande d'interviewer des

membres de la Gendarmerie et d'accéder à des documents pertinents. Cette question est abordée plus en profondeur au Chapitre 7.

Le déroulement de la première enquête du Président est exposé en détail ci-après, pour illustrer les difficultés qu'éprouve la Commission.

Le 30 janvier 1989 : la Commission des plaintes du public reçoit plusieurs plaintes contre quatre membres d'un détachement de la GRC dans l'Ouest canadien.

Le 16 février : les plaintes sont transmises au Commissaire de la GRC en même temps que l'avis du Président précisant qu'il a l'intention d'enquêter sur les plaintes dans l'intérêt public.

Le 18 février : le directeur exécutif de la Commission rencontre un commissaire adjoint de la GRC et lui fait savoir que les enquêteurs de la Commission entreprendront leur enquête sur-le-champ et qu'il leur faudra examiner des rapports et des documents relatifs aux enquêtes internes et opérationnelles de la Gendarmerie et en prendre des doubles.

Le 20 février : les enquêteurs de la Commission mènent une enquête comprenant des entrevues avec le plaignant, un certain nombre de témoins et les membres de la GRC en cause. Les enquêteurs ont alors l'occasion d'examiner les dossiers opérationnels pertinents. Ils prennent des notes, mais, faute de temps, ils n'analysent pas les dossiers en détail.

Le 7 mars : le directeur exécutif de la Commission écrit à la GRC pour demander la communication des dossiers opérationnels et des carnets des membres. Il envoie une note de rappel le 30 mars.

Le 11 avril : le directeur exécutif de la Commission et le sous-commissaire de la GRC chargé de l'administration générale discutent de la demande portant sur les dossiers opérationnels et

soit auprès d'un membre de la GRC, ou encore auprès d'une autorité provinciale.

Sans ces renseignements, la Commission ne sera au courant, dans la plupart des cas, que des plaintes déposées auprès d'elle à l'origine et de celles ayant été transmises par des plaignants insatisfaits de la décision prise par la Gendarmerie à leur égard.

Jusqu'ici la Commission n'a reçu directement que 13 p. 100 de toutes les plaintes, et les demandes d'examen dont elle a été saisie par ailleurs ont été relativement rares.

Au moins deux raisons importantes militent en faveur de la communication à la Commission des renseignements sur toutes les plaintes formulées en vertu de la Partie VII:

- tout d'abord, il est essentiel que le Président ait l'occasion d'examiner toutes les plaintes peu après qu'elles ont été déposées, de sorte qu'il puisse juger s'il doit exercer le pouvoir que lui confère la loi d'enquêter ou d'ordonner une audience dans l'intérêt public; et
- deuxièmement, il doit pouvoir, dans son rapport annuel, informer le Parlement sur le fonctionnement du processus concernant les plaintes du public avec les recommandations qu'il estime appropriées.

Le Président a été déçu d'apprendre en janvier que la Gendarmerie n'avait pas l'intention de lui fournir les renseignements sur toutes les plaintes reçues par elle. Le Président a alors appris qu'un ordre permanent du Commissaire de la GRC donné le 4 octobre 1988 exige que la Commission soit informée uniquement de la disposition des plaintes déposées d'abord auprès de celle-ci.

La *Loi sur la GRC* exige que le Commissaire de la Gendarmerie établisse et conserve un dossier de toutes les plaintes reçues par celle-ci et qu'il communique à la Commission, sur demande, tout renseignement contenu dans le dossier.

En conséquence, le 3 février, le Président a écrit au Commissaire de la GRC pour lui demander de communiquer tous les renseignements pertinents contenus dans le dossier. Le Président expliquait les motifs de sa demande et ajoutait que celle-ci présentait une certaine urgence, car la Partie VII était en vigueur depuis quatre mois, et les renseignements étaient nécessaires pour la rédaction du rapport. Le Président proposait au Commissaire de songer à modifier son ordre permanent pour qu'il s'applique à toutes les plaintes reçues par la Gendarmerie en vertu de la Partie VII.

Dans sa réponse reçue le 22 mars, le Commissaire de la GRC déclarait que la Gendarmerie comptait communiquer à la Commission chaque semaine:

- un double de toutes les formules 1442 (formule de plainte utilisée par la Gendarmerie) dans le cas des plaintes réglées à l'amiable; et
- un double de toutes les formules 1442, des rapports provisoires et des rapports définitifs, dans le cas des plaintes ayant fait l'objet d'une enquête, une fois l'enquête terminée.

Le Commissaire a informé le Président que, selon l'interprétation de la Gendarmerie, le « dossier » comprend à cette fin la formule 1442 de même que les rapports d'étape et le rapport définitif sur les enquêtes faites par la GRC par suite de plaintes. La formule 1442 fournit le nom du plaignant, les détails sur la plainte, le nom de la personne visée par celle-ci, l'accusé de réception de la plainte, le règlement de la plainte à l'amiable, ou (traduction) « une indication précisant que la plainte fera l'objet du processus officiel prévu par la CPP ».

Dans sa réponse du 31 mars, le Président demandait que les renseignements consignés au dossier soient communiqués en deux étapes. Dans un premier temps, la formule 1442 serait transmise dans les meilleurs délais raisonnables après réception de la plainte, pour que le Président puisse décider si une

enquête ou une audition d'intérêt public est justifiée. Dans un second temps, la Gendarmerie communiquerait les autres renseignements une fois la plainte réglée, soit à l'amiable, soit par rapport définitif. Le Président soulignait aussi que la Commission n'avait encore reçu aucun renseignement en réponse à sa demande du 3 février.

Il était devenu évident que la Gendarmerie n'avait pas aussi facilement accès à l'information qu'on l'aurait cru. Les données sur les plaintes n'étaient pas centralisées, mais conservées dans les divisions opérationnelles de la Gendarmerie. Bref, celle-ci n'était pas préparée comme elle aurait dû l'être pour répondre aux exigences de la Partie VII.

Dans sa lettre du 31 mars, le Président a exhorté le Commissaire de la GRC à accélérer la mise en place d'un système centralisé d'archivage. Il a émis l'idée que la GRC et la Commission songent à se doter de systèmes informatiques compatibles qui serviraient leurs intérêts mutuels.

Par la suite, le Commissaire de la GRC a convenu d'examiner la proposition relative aux systèmes informatiques. Des représentants de la Commission et de la GRC ont, depuis, amorcé des discussions à cet égard.

Dans sa réponse du 12 mai, le Commissaire de la GRC n'a toutefois pas accédé à la demande du Président portant sur la communication en deux étapes des renseignements sur la totalité des plaintes. Il a déclaré que, selon l'interprétation donnée par la GRC à la *Loi sur la GRC*, le Parlement voulait que le Commissaire communique les renseignements figurant au dossier, si la Commission le demandait expressément pour des plaintes données. C'était en ce sens qu'il avait rédigé son ordre permanent. Vu le nouveau système de rapports souhaité par la Commission, le Commissaire a déclaré avoir l'intention de révoquer cet ordre permanent.

Le Commissaire de la GRC a répété qu'il était prêt à communiquer les renseignements sur toutes les plaintes énumérées dans les rapports hebdomadaires, une fois le dossier complété. Il a ajouté qu'il était désormais disposé, compte tenu des arguments du Président, à fournir d'autres renseignements courants sur des plaintes précises, avant la fermeture du dossier.

Le Commissaire estimait que cela permettrait au Président de décider quelles plaintes devaient, aux fins de l'intérêt public, faire l'objet d'une enquête par lui ou d'une audience de la Commission.

Le Commissaire a déclaré que, comme la Commission n'entrait en jeu qu'une fois la plainte réglée par la Gendarmerie (sauf dans le cas des enquêtes d'intérêt public menées par le Président, ou dans celui des audiences tenues par la Commission), la méthode qu'il proposait « favoriserait davantage, selon lui, la communication permanente de l'information ».

Quant au fait qu'au 31 mars 1989, la Gendarmerie n'avait encore fourni aucun des renseignements demandés, le Commissaire a déclaré que ses services n'ont commencé « à réunir la documentation et les données nécessaires dans l'ensemble de la Gendarmerie pour créer le système hebdomadaire de rapports » qu'après qu'il eut décidé de fournir les renseignements toutes les semaines. Selon lui, la mise en oeuvre de ce système le 14 avril « définissait un échéancier raisonnable pour répondre à la demande du Président ».

L'échéancier du Commissaire est raisonnable, vu les circonstances. Toutefois, en pratique, le Président est incapable de fournir dans le présent rapport une analyse générale des 1 081 plaintes déposées en vertu de la Partie VII et reçues par la Gendarmerie entre le 30 septembre 1988 et le 31 mars 1989.

Le Président continuera de discuter avec le Commissaire pour que l'on en arrive à communiquer

les renseignements contenus dans le dossier d'une façon à rencontrer les besoins de la Commission. Certains progrès ont été accomplis, et le Président souhaite souligner la volonté de collaboration du Commissaire de la GRC.

Qualité de l'information reçue

Les premiers renseignements communiqués à la demande du Président l'ont été le 14 avril. Au 12 mai, la Commission avait de l'information sur 296 plaintes. Comme la GRC avait reçu 1 081 plaintes au cours des six premiers mois d'existence de la Commission, elle n'avait, au 12 mai, fourni de l'information que sur 27,4 p. 100 (296 sur 1 081) d'entre elles. De l'information sur les autres est fournie de façon continue.

Les 296 plaintes en question avaient toutes été réglées par la GRC en vertu de la Partie VII : 202 à l'amiable, et 94 après une enquête officielle et la présentation d'un rapport en bonne et due forme. Les observations suivantes concernent ces 94 plaintes:

- dans 76 cas, des motifs ont été fournis au plaignant dans le rapport;
- dans 18 cas, la plainte a été réglée sans que des motifs soient donnés au plaignant; et
- dans 15 cas, la plainte a été jugée fondée.

Le Président a été heureux de constater que l'on avait communiqué des motifs aux plaignants dans la plupart des cas. Toutefois, dans 18 cas, le rapport n'indiquait pas aux plaignants pourquoi leurs plaintes avaient été jugées « injustifiées » ou sans « fondement ». Cela est malheureux. Les plaignants ont le droit de recevoir une explication, de manière à pouvoir juger si la décision de la Gendarmerie est satisfaisante et, si elle ne l'est pas, s'il y a lieu de recourir à la Commission.

Dans les 94 cas précités, le délai moyen écoulé entre la réception de la plainte par la GRC et la rédaction du rapport, était de 66,5 jours.

La moyenne de 66,5 jours risque d'être trompeuse. Ces 94 rapports sont les premiers que la Commission ait reçus. Il pourrait s'agir des plaintes qui pouvaient le plus facilement faire l'objet d'une enquête et d'un rapport. Lorsque la Commission aura reçu les renseignements sur celles qui, parmi les 1 081 plaintes, ont fait l'objet d'une enquête officielle et d'un rapport, le délai moyen de traitement par la GRC pourrait être bien différent.

La *Loi sur la GRC* autorise le Commissaire de la GRC à déléguer l'établissement des rapports, ce qu'il a fait le 5 octobre 1988 par une délégation de pouvoirs à l'officier chargé de l'administration et du personnel dans chaque division. Toutefois, d'autres membres de la Gendarmerie ont signé des rapports, notamment des sergents affectés aux patrouilles routières. Cela est inacceptable. Les ordres permanents du Commissaire devraient préciser qui doit rédiger ces rapports, et la Gendarmerie devrait s'y conformer.

Les rapports doivent comporter un résumé de la plainte. Dans certains cas, le résumé était si bref qu'il était impossible de savoir quelle était la nature de la plainte. Dans d'autres cas, la formule de la Gendarmerie (formule 1442) mentionnait que la déclaration du plaignant était jointe à la plainte, mais aucune déclaration n'accompagnait la formule envoyée à la Commission. Cinq doubles des formules de plainte transmis à la Commission étaient illisibles. Manifestement, il faut établir des directives plus précises et surveiller de plus près la qualité des rapports, dont certains laissaient à désirer.

Il incombe au Président d'examiner les plaintes pour décider s'il doit, dans l'intérêt public, amorcer sa propre enquête ou demander à la Commission de tenir une audience; or, l'information lui ayant été fournie par la GRC sur les 296 plaintes susmention-

nées ne lui permettait pas toujours de s'acquitter de cette responsabilité.

Il semble que l'on ne satisfait pas toujours à l'exigence de la loi voulant que le plaignant et le membre concerné de la GRC reçoivent un rapport provisoire 45 jours après la réception de la plainte par la GRC, et tous les mois par la suite jusqu'à ce que l'enquête soit terminée.

Le rapport du Commissaire de la GRC au plaigant (et au membre de la Gendarmerie en cause) doit contenir un résumé des mesures qui ont été prises ou qui le seront aux fins du règlement de la plainte. Pour les 15 plaintes jugées fondées, les rapports déclaraient :

- dans sept cas, que des mesures disciplinaires internes avaient été prises (six cas) ou seraient prises (un cas); aucune autre explication n'était fournie;
- dans quatre cas, que des mesures rectificatives avaient été prises; aucune autre explication n'était fournie;
- dans deux cas, qui étaient des demandes d'indemnisation, que la GRC reconnaissait ses torts;
- dans un cas, qu'une accusation de voies de fait avait été déposée et devait être entendue en cour provinciale en décembre 1989;
- dans un cas, où le plaignant prétendait qu'il y avait eu voies de fait, que le procureur de la Couronne avait jugé « l'allégation fondée », mais qu'il n'y avait pas eu de poursuites, à la demande du plaignant.

On peut se demander si 11 de ces déclarations satisfont aux exigences de la Partie VII. Constituent-elles un résumé des mesures prises ou devant être prises? La question de savoir si le plaignant a le droit de connaître précisément les mesures prises et, le cas

échéant, l'étendue de la compétence de la Commission en ce qui concerne la discipline sont traitées au chapitre 6.

Il semble que dans 28 des 94 rapports, le plaignant n'a pas été avisé, comme l'exige la loi, de son droit de référer la plainte à la Commission pour examen s'il n'était pas satisfait de la décision rendue par la Gendarmerie. C'est là une grave négligence. Ici encore, le besoin d'une direction et d'une surveillance appropriées se fait sentir. Il semble que certains membres de la Gendarmerie comprennent mal le rôle de la Commission. Dans certains cas, on a dit aux plaignants, sans mentionner aucunement la Commission, que, s'ils n'étaient pas satisfaits, ils pouvaient présenter leur cas au commandant de la division ou au Solliciteur général de la province.

Même quand le plaignant est informé de son droit de s'adresser à la Commission, il arrive que l'adresse et le numéro de téléphone de celle-ci ne figurent pas dans le rapport. Pareils renseignements devraient être fournis automatiquement. La GRC dispose d'une excellente brochure sur la Partie VII, et elle la joint parfois aux rapports.

Dans quelques cas, il semble que la Gendarmerie ait eu de la difficulté à communiquer avec le plaignant pour faire son enquête. La GRC a alors décidé qu'il lui était impossible d'enquêter et elle a fait parvenir une lettre en ce sens à l'intéressé(e). Dans d'autres cas, on trouve dans la formule de la Gendarmerie une note précisant que la plainte a été retirée.

Cette façon de traiter les plaintes exige un commentaire. Une fois la plainte déposée, il n'est pas clair en droit que la loi en permette le retrait. Deuxièmement, s'il est possible de considérer une plainte comme ayant été retirée, le motif du retrait devrait être énoncé clairement dans la formule, si ce motif est connu de la Gendarmerie. Troisièmement, si la plainte semble avoir quelque fondement, elle devrait faire l'objet

d'une enquête par la Gendarmerie, même si l'on ne peut trouver le plaignant ou si celui-ci désire la retirer. Après tout, la Gendarmerie dispose déjà des renseignements contenus dans la plainte même.

Enfin, les diverses divisions de la GRC utilisent plusieurs formules différentes qui ne contiennent pas toutes la même information dans le cas du règlement d'une plainte à l'amiable. Il faudrait uniformiser les procédures.

En conclusion, la qualité des rapports doit être améliorée, et la Gendarmerie doit fournir des lignes directrices en ce sens et assurer la surveillance nécessaire à cet égard.

3. L'annulation des contraventions pour infraction au code de la route

Le 9 janvier 1989, un caporal de la GRC a été acquitté, par un juge de la cour de comté à Halifax, de deux chefs d'accusation. On lui reprochait d'avoir annulé une contravention pour excès de vitesse. On avait retenu contre lui (i) la tentative d'entrave à la justice et (ii) l'abus de confiance pour avoir pris des dispositions visant à mettre fin aux poursuites intentées en vertu du *Motor Vehicle Act* de la Nouvelle-Écosse.

La contravention avait été servie à un concessionnaire d'automobiles. Son commerce assurait parfois l'entretien des voitures de la GRC, et il semble qu'à certaines occasions il ait fourni gratuitement des voitures à certains membres de la GRC, y compris le caporal inculpé. Ces voitures auraient été prêtées pour des missions de surveillance car, à l'époque, le budget de la GRC ne permettait pas de louer des véhicules pour mener des opérations d'infiltration. Le gendarme qui avait émis la contravention l'a annulée à la demande du caporal qui lui avait dit que le concessionnaire d'automobiles « avait déjà rendu service » à la Gendarmerie.

Acquittant le caporal, le juge de la cour de comté a déclaré:

(Traduction)

> J'estime que ce qu'il a fait correspondait aux usages ayant cours à la Gendarmerie à l'époque. Je ne suis pas disposé à faire de lui un bouc émissaire en l'inculpant pour des actes que d'autres aussi commettaient couramment. Je peux vous dire que ce n'est pas convenable et que je n'aime pas ce que j'ai entendu, mais cette opinion ne saurait servir de base à une condamnation pénale...
>
> Je l'ai déjà dit et je le redis, je réprouve la justice à « deux poids, deux mesures », c'est-à-dire que, si vous connaissez quelqu'un de bien placé, vous pouvez éviter certaines conséquences, mais si vous ne connaissez personne, vous allez subir les rigueurs de la loi.

L'affaire a été reprise par les médias et portée à l'attention du Président. Il s'est procuré les transcriptions des témoignagnes qui contenaient diverses déclarations faites par des témoins membres de la GRC et touchant les pratiques et les politiques de cette dernière. Le gendarme qui avait annulé la contravention a notamment déclaré :

(Traduction)

- « Il m'est arrivé d'annuler des contraventions pour des raisons très diverses; il pouvait s'agir du beau-père d'un ami, ou de quelqu'un qui voulait échanger des renseignements sur un trafic de drogue ou encore des renseignements concernant d'autres infractions pénales. »
- Il a ajouté qu'à l'époque où avait été émise la contravention en cause, d'après lui, la politique de la Gendarmerie relativement à l'émission et à l'annulation des contraventions était généralement de laisser à l'intéressé le soin de décider.

- Il a déclaré qu'à l'époque du procès, la politique de la Gendarmerie avait été modifiée et que « si quelqu'un voulait annuler une contravention pour une infraction punissable sur déclaration sommaire de culpabilité, il lui fallait remplir une formule au bureau, en y inscrivant les raisons de l'annulation envisagée, et cette formule devait être jointe au double de la contravention conservé par la police et versé au dossier ».

La Couronne a fait comparaître un sergent de la Gendarmerie, afin qu'il expose la politique et la pratique en vigueur dans la GRC. Le juge de première instance a souligné que les réponses du sergent étaient longues et qu'il avait l'impression que le sergent essayait de contourner certaines des questions posées. Le sergent a déclaré :

- qu'il ne pensait pas que la raison invoquée pour l'annulation de la contravention était valable;

- qu'une nouvelle politique avait été adoptée, en vertu de laquelle les superviseurs et le procureur devaient contrôler les motifs d'annulation des contraventions;

- qu'une nouvelle politique ne changeait rien à ce qui constituait un exercice convenable du pouvoir discrétionnaire; et

- que l'exercice convenable du pouvoir discrétionnaire pouvait se traduire par l'annulation d'une contravention en échange de renseignements sur une infraction plus grave. (Traduction) « Mais évidemment il y avait des gens appartenant au monde interlope que l'on arrêtait pour conduite en état d'ivresse et qui voulaient négocier pour rendre certains services à la police et à l'ensemble de la collectivité; dans ces cas-là, il fallait, bien sûr, sérieusement envisager la question. »

Étant donné les témoignages recueillis et les observations du juge de première instance, le Président se

demande si *aujourd'hui* les membres de la Gendarmerie se comportent toujours correctement lorsqu'il s'agit d'annuler une contravention. L'affaire portait sur un incident s'étant produit dans la juridiction d'un détachement donné, mais elle soulève des questions d'une portée plus générale.

Ce qui a été révélé au procès permet de s'interroger sur la manière dont, dans l'ensemble du pays, les membres de la GRC se comportent relativement aux contraventions. Bien que les politiques provinciales en matière de circulation routière et les lois appliquées par la GRC puissent varier d'un endroit à l'autre, les critères de conduite devraient être les mêmes pour tous les membres de la GRC n'importe où au pays.

La réponse va dépendre de la justesse des politiques et des procédures de la Gendarmerie et de la manière dont elles sont appliquées dans une situation donnée. Il est bien évident qu'il convient d'accorder, en matière de contraventions, un certain pouvoir discrétionnaire. Mais à partir du moment où une contravention a été émise, son annulation devrait être soumise à des conditions très précises.

La contravention représente une façon simplifiée d'accuser une personne d'une infraction et de la sommer de répondre de sa faute devant un tribunal. La plupart des provinces, sinon toutes, ont prévu des dispositions législatives autorisant l'émission de contraventions, principalement pour les infractions au Code de la route. La *Summary Proceedings Act* de la Nouvelle-Écosse prévoit, par exemple, (TRADUCTION) qu'« une plainte peut être déposée et une citation à comparaître servie au moyen d'une contravention... ». L'agent de police qui dresse la contravention donne à la personne accusée d'avoir commis l'infraction la partie de la contravention qui constitue la citation à comparaître. La partie « plainte » de la contravention, contenant les détails de l'infraction, doit par la suite faire l'objet d'un serment par un agent devant un juge de paix.

À partir du moment où cette procédure légale d'accusation est entamée par l'émission, d'une contravention, il faut examiner avec soin si la police est bel et bien justifiée d'exercer son pouvoir discrétionnaire pour arrêter ou annuler cette procédure. Il convient de tenir compte du rôle de la Couronne et des tribunaux, surtout quand la plainte a fait l'objet d'un serment.

Il convient de s'interroger sérieusement quant à savoir si l'annulation d'une contravention donnée à un informateur constitue un exercice justifié de ce pouvoir discrétionnaire.

La Gendarmerie ne semble pas avoir de politique nationale sur ce point. La question de l'annulation des contraventions n'est même pas soulevée dans les procédures opérationnelles spéciales concernant les techniques de surveillance de la circulation routière. La question ne semble pas non plus avoir été traitée dans une politique nationale sur l'exercice du pouvoir discrétionnaire de la police ou le retrait d'une accusation. La nouvelle politique dont a parlé à l'audience le caporal de la GRC serait, semble-t-il, propre à la division ou au détachement. Cela ne ressort pas clairement des transcriptions des témoignages.

Il est donc nécessaire de formuler, pour l'ensemble du pays, des politiques et procédures appropriées. La question ne devrait pas être laissée à la discrétion des autorités locales.

L'administration de la justice exige que toute personne accusée soit traitée avec un même degré d'équité et que la procédure légale suive son cours. Le public a le droit d'exiger qu'il en soit ainsi. Le public cesse de respecter les services de maintien de l'ordre lorsqu'il prend connaissance d'affaires telles que celles d'Halifax, ou quand l'idée se répand que la GRC aime rendre service à ses amis en annulant les contraventions dont ils ont écopé.

Comment la Commission doit-elle ou peut-elle envisager la question? Elle n'a pas compétence pour examiner les politiques et procédures de la GRC à moins d'avoir reçu une plainte sur la conduite d'un membre de la GRC. La Commission n'est pas habilitée à contrôler ou vérifier les activités opérationnelles de la Gendarmerie.

Le Président pense que la Commission peut, à juste titre, se pencher sur de telles questions et que le législateur a voulu qu'il en soit ainsi. Mais si aucun membre du public n'a porté plainte devant elle, la Commission ne peut avoir compétence que si son Président porte lui-même plainte. La plainte doit viser la conduite d'un membre de la GRC dans l'exercice de ses fonctions, et le Président doit estimer qu'il existe des motifs raisonnables d'enquêter en pareil cas.

La Commission n'a eu connaissance d'aucune plainte déposée par un membre du public au sujet de l'annulation de contraventions. Si elle entend se pencher sur cette question en vertu de la Partie VII de la *Loi sur la GRC*, il faudra qu'au préalable le Président porte plainte.

Le Président estime qu'il ne convient pas de porter plainte à l'égard de l'incident précis qui a suscité les accusations formulées contre le caporal. Cet incident s'est produit plus de deux ans avant l'entrée en vigueur des dispositions de la Partie VII. Depuis lors, les politiques en vigueur dans la Gendarmerie ont changé, et l'incident a lui-même été traité devant les tribunaux criminels.

Le Président a également envisagé de déposer une plainte de caractère général contre des membres non identifiés de la GRC, sur la foi des témoignages recueillis à l'audience. Cela soulèverait des problèmes d'ordre procédural, étant donné que la Partie VII vise des membres de la GRC dont l'identité est connue et qui ont un rôle à jouer dans le processus, et notamment à l'audience.